

700. 845

A

ADDENDUM

NOTE.—At the request of the court, the following point, not included in the original brief, is here printed.

I (A)

The property herein involved was lawfully seized as enemy property under Section 7, subdivision (c)

The only provision in the entire act for the taking over of enemy property by the Alien Property Custodian (except as to enemy-owned shares of stock in American corporations) was Section 7, subdivision (c), reading:

If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

It is submitted that this provision authorized the taking over of the property of a corporation of a country other than the United States if, as here, a majority of its stock was enemy owned. Certainly in a very real sense the property of a corporation may be said to be held "on account of, or on behalf of, or for the benefit of" its stockholders. The Execu-

tive Department construed this provision as authorizing the seizure of the property of a corporation a majority of whose stock was enemy owned. Appellant concedes on page 23 of its brief that this provision authorized the seizure of the property of corporations of neutral countries. Why not, then, of any country? Moreover, throughout the act, is indicated, the intent of Congress that the Government should look beneath the corporation covering and consider whether the stockholders were enemies. See, for examples, the first part of Section 7, as to enemy stockholders in American corporations, and, also, paragraphs (6) and (11) of subdivision (b) of Section 9, as amended.

(Apparently too broad a statement of p 23 of App. brief - What is meant is "enemy property" i.e. property held for or on account of enemy by Neutral corporations)

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In the Supreme Court of the United States

OCTOBER TERM, 1924

BEHN, MEYER & COMPANY, LIMITED,
appellant

v.

THOMAS W. MILLER, AS ALIEN PROPERTY
Custodian, and Frank White, as Treasurer
of the United States, appellees

No. 343

APPEAL FROM THE COURT OF APPEALS OF THE
DISTRICT OF COLUMBIA

BRIEF ON BEHALF OF APPELLEES

STATEMENT OF THE CASE.

The appellant is and at the time its property was seized by the Alien Property Custodian was a corporation of the Straits Settlement, a British Colony. It is conceded that a majority of its stock was and is owned by subjects of Germany.

The Trading with the Enemy Act as amended June 5, 1920, authorized the return of property theretofore seized by the Alien Property Custodian in the event the owner thereof, when it was seized, was—

A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated

within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder.

A later amendment, that of March 4, 1923, extended the privilege of having property returned to corporations of countries other than enemy countries if not more than 50 per cent of their stock was owned by subjects of enemy countries.

The principal question in the case is whether the appellant, a majority of whose stock was and is owned by subjects of Germany, is nevertheless not within the implied prohibition of the return of property in the amendments aforesaid simply because at the time of the seizure of said property the appellant was not, as is claimed, within the letter of the definition under the Trading with the Enemy Act of the terms "enemy" or "ally of enemy." There is also a question as to whether it was not in reality within the definition.

ARGUMENT

I

The amendment to the Trading With the Enemy Act of June 5, 1920, prohibits the return of appellant's property.

Under the original Trading with the Enemy Act it was for the Executive Department of the Government to determine whether particular property was enemy owned (*Central Union Trust Co. v. Garvan*,

254 U. S. 554; *Stoehr v. Wallace*, 255 U. S. 239, 245), subject to the owner's right to a judicial determination of whether in fact he was at the time of the seizure and *when return of property was sought* an "enemy" or "ally of enemy." Acting under the authority of the Act and presumably upon his determination that the appellant was an "enemy" the Alien Property Custodian seized certain of appellant's property in February, 1918.

Whether appellant at the time of seizure of its property was within the letter of the definition of "enemy" or "ally of enemy" as set out in Section 2 of the original Act is not, as we view it, the determining question in the case. *Arguendo* it might be conceded that at the time mentioned appellant was neither "enemy" nor "ally of enemy" (although no such concession is made), nevertheless appellant can not recover if by reason of an amendment to the Act before its suit was brought an alteration had taken place either in its status or in its right to recover the property that had been seized.

A very large part of the brief of appellant is devoted to a discussion of the intention of Congress in the original Act. That discussion is not pertinent to the effect of the amendment. It is the amendment, however, which defeats the appellant's claim. The case turns almost entirely upon its meaning.

The significant parts of the amendment of June 5, 1920, are the following:

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or

paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

* * * * *

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder;

* * * * *

then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian;

* * * * *

(c) Any person whose property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

The entire amendment is set out in Appendix "A."

It is conceded in the brief of appellant herein (see page 71 of appellant's brief) that the effect of paragraph (6) above quoted is to prohibit the return of the property of such corporations as are not therein described, if any portion of their stock was enemy owned. The only question then is, Does that description exclude the appellant?

On its face the description clearly excludes the appellant.

The language is, "a corporation incorporated within any country other than the United States and * * * entirely owned * * * by subjects of nations * * * other than Germany." *Appellant is not within that description* because, while a corporation of a country other than the United States, a majority of its stock was and is owned by subjects of Germany.

It is to be noted that the application of the section is not restricted, as appellant seeks to restrict it, to "enemy" corporations. The words are "a corporation incorporated within any country." Moreover, and here we think is the insurmountable difficulty in the path of appellant, the application of subsection (b) is not, as appellant urges, only to such property of *enemies or allies of enemies* as has been seized but "*in respect of ALL money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder.*"

There is no escape from the conclusion that this language includes the property taken from appellant, that is, no escape, unless there be interpolated in the language "*all * * * property * * * seized*" the words or their equivalent, "except property which although determined to have been enemy property when seized shall judicially be determined not to have been at the time of seizure enemy property." We submit there is no justification whatever for any such interpolation.

The whole case of appellant depends upon its contention that the plain words of the amendment should be given a restricted meaning wholly unjustified and indeed defying the language employed.

The theory urged by the appellant and the theory that it must sustain to recover is that although the amendment of 1920 purports on its face to apply to *all* money or property seized and to define what

classes of persons whose property has been seized may have it returned, nevertheless it does not apply to *all* property seized but only to a part thereof.

To sustain this theory the appellant in effect asks the court to strike out of the amendment the word "all" in the phrase "all money or other property * * * seized," to add to subsection (b) language restricting the application of subsection (b) to persons not covered in subsection (a), and to add language to paragraphs (6) and (11), if not others, of subsection (b), restricting their apparent application, and to do all of this notwithstanding it is in no sense necessary in order that reasonable effect may be given to section 9 as a whole.

Section 9 is a whole. It was enacted as a whole at the time of each of the amendments, that of 1920 and that of 1923. It should be construed as a whole, each part in the light of and as modified by other parts so as to achieve an harmonious interpretation of the several parts (*United States v. Landram*, 118 U. S. 81, 85; *A. Bryant Co. v. N. Y. Steam Fitting Co.*, 235 U. S. 327, 337; *Market Co. v. Hoffman*, 101 U. S. 112, 116; *Peck et al. v. Jenness*, 48 U. S. (7 How.) 612, 622). No principle of statutory construction can justify the contention of appellant that subsection (a) of Section 9 is to be considered altogether apart from what follows it and with no effect given to the limitations imposed upon subsection (a) by the remaining language of Section 9.

Construing the section as a whole we submit it must be held that any right to sue to recover property that might seem to be conferred by subsection (a) if it stood alone must be considered as restricted by subsection (b) to the classes of persons therein enumerated.

The contention made by appellant that it was not the intention of Congress that the amendments should effect any rights that might have existed prior to the amendments not only defies the plain language of subsection (b) but also that of subsection (e), added at the same time as (b) and providing that—

No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owed by the claimant prior to October 6, 1917, *and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.* (Italics ours.)

If the appellant's contention is sound to the effect that subsection (a) of Section 9 must be taken without regard to the rest of the section, then section (e) becomes of no effect whatsoever. Prior to the amend-

ment of June 5, 1920, any individual, not an enemy, could sue to secure the return of his property. This applied to citizens of every nationality, so that a Frenchman or a citizen of Great Britain, provided he did not reside in enemy territory, could, if his property had been wrongfully seized, sue under Section 9 without any restriction, and secure the return thereof. However, subsection (e) provides that no money or other property shall be returned, nor any debt allowed under the section to any person who is a citizen or subject of any nation with which the United States was associated in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States. Here is a very evident restriction upon the formal provisions of Section 9, but if appellant's contention is true, a Britisher, if he is not an enemy, may sue under subsection (a) without any regard to subsection (e), and even though Great Britain does not accord reciprocal rights to American citizens, may secure the return of property or the payment of debts out of enemy property.

Furthermore, subsection (e) provides that no debt can be allowed under Section 9, unless it was owing to and owned by the claimant prior to October 6, 1917. Here is another limitation placed upon at least the apparent provisions of Section 9. Furthermore, subsection (e) provides that as to claimants other than citizens of the United States, no debt can be allowed out of property in the hands of the Custodian, unless it arose with reference to the money or other property held by the Alien Property Custodian or the Treas-

urer of the United States. Prior to the amendment of June 5, 1920, a German citizen residing in the United States who had not been interned could sue under Section 9 and secure the payment of a debt owing to him from an enemy whose property had been seized.

Since this amendment, however, such a German can not sue and secure the payment of debts unless the debt arose with reference to the property in the hands of the Custodian. The same thing is true with respect to citizens of France, England, or any other country, other than the United States. Their debt must arise with reference to the property before they can sue. This was not true, however, before the amendment of June 5, 1920. Prior to that date a citizen of Great Britain could secure the payment of his debt against an enemy out of enemy property in the hands of the Custodian, even though it did not arise with reference to the property in the hands of the Custodian. This provision has been sustained by the Courts. *Kogler v. Alien Property Custodian*, 288 Fed. 806.

It is apparent then that the amendment of June 5, 1920, did restrict the original Section 9. It must, therefore, follow that the contention of the appellant is unsound, for to follow that contention would entirely eliminate subsection (e) of the Act. Section 9 as amended June 5, 1920, is an entire statute and each part must be construed with respect to every other party. It is true that there are certain features of the amendment which give persons hereto-

fore enemies the right to recover under the Act. It was necessary to make a provision with respect to corporations whose stock was owned by enemies, in view of the confusion that had arisen.

II

The appellant was an "enemy" within the meaning of the Trading with the Enemy Act

Not only does appellant's case depend upon what we have tried to show is its untenable theory that the amendments of 1920 and 1923 do not apply to *all* property seized by the Alien Property Custodian, but upon its contention that appellant was not an "enemy" within the meaning of the Trading with the Enemy Act. We do not concede this. On the contrary, we submit that in the light of the whole Act appellant was an "enemy" and that its property was properly seized as such.

Appellant relies upon Section 2 of the Act defining who shall be deemed an "enemy" or "ally of enemy" within the meaning of the Act. So much of that section as defines "enemy" (the definition of "ally of enemy" is not different) reads as follows:

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States

and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

We must concede, of course, that appellant was not such a corporation as subdivision (a) of Section 2 expressly describes, since it was neither incorporated within an enemy country nor was it doing business within such territory. But, *a majority of its stockholders were enemies*. We do not know how large a majority. No doubt the executive officers of the United States who in the prosecution of the war seized the property involved did know. It is possible that every share of stock save one was enemy owned. In other words, the appellant was an artificial entity camouflaging the enemies of the nation and all of the property which technically it owned was in

reality their property (and that of such minority stockholders as were not enemies).

Section 2 defines as an "enemy" "any individual, partnership, or other *body of individuals*, of any nationality, resident within the territory of any nation with which the United States is at war." It will scarcely be contended that this language (and all other language in the Act) is not to be liberally construed in favor of upholding the power of the Government to do everything regarded by the executive as necessary in the prosecution of a war—in the maintenance of the very life of the nation. But in a very real sense, if not in a strictly technical sense, a corporation is but a "*body of individuals*." Will the court say, keeping in view the character of this Act as a war measure, that by reason of somewhat attenuated technical distinctions the executive branch of the Government engaged in the prosecution of a war could not, through the thin corporation covering, strike at the "enemies" underneath—the "*body of individuals*" who were within even the letter of the definition the "enemies" of the nation.

If a liberal construction were not otherwise to be assumed in favor of the power of the government in war it would certainly be suggested by the provision that by his mere proclamation the president could declare any class of persons whatever to be "enemies."

This court has never held that a corporation is an impenetrable mask. On the contrary, often, it has looked through the corporation to the individuals composing it. It has done that to subserve the

interests of those individuals. It will hardly prevent it being done to protect the vital interests of the nation. Consider, for example, the leading case holding that a constitutional provision conferring certain rights on citizens confers those rights not only in their individual but also in a corporate capacity. Reference is to *Bank of the United States vs. Deveaux*, 5 Cranch, 61, 87, wherein the question was as to whether the federal courts, having jurisdiction of "controversies between citizens of different states," could look through a corporation to the citizens composing it so as to exercise jurisdiction of a controversy between a corporation of one state and citizens of another state. Chief Justice Marshall said:

The jurisdiction of this court being limited to "controversies between citizens of the different states," both parties must be citizens to come within the description. That invisible, intangible, and artificial being, a corporation aggregate, is certainly not a citizen; and, consequently, can not sue or be sued in the courts of the United States, unless the rights of the members in this respect, can be exercised in their corporate name. * * * (But) the controversy is substantially * * * between citizens of one State, suing by a corporate name, and those of another State.

Similar cases are *McKinley v. Wheeler*, 130 U. S. 630, and *United States v. Northwestern Express Co.*, 164 U. S. 686.

So here, the United States looked through the corporation to the enemies composing it and seized its property because in reality it was their property. It was dealing with realities and stern ones and was not to be balked by fictions and Congress did not intend that it should be.

True, in Section 2, defining "enemies," corporations are specifically mentioned. True, also, there are rules of construction that in that situation would exclude corporations from the preceding reference to "individuals" and "bodies of individuals." The great rule, however, is that effect must be given to the intent as gathered from all the language employed, regardless of lesser rules of construction and we submit that the intent of this act was to present a broad definition actually or potentially including all possible enemies.

That Congress intended that the corporation shell should be pierced is perfectly apparent, of course, from the amendment of June 5, 1920, Section 9 (b)-6 thereof, wherein in effect Congress prohibits the return of the property of a corporation, without regard to whether in its corporate capacity it was ever an "enemy," if so much as one share of its stock was enemy owned. It is equally apparent from the amendment of March 4, 1923, Section 9 (b)-11, wherein in effect Congress prohibits the return of the property of a corporation, without regard to whether in its corporate capacity it was ever an "enemy," if fifty per cent or more of its

stock was enemy owned. These amendments amount to a legislative construction or explanation of the intent of the original act that the definition therein of individuals of certain countries as "enemies" included such individuals whether acting in a corporate capacity or otherwise.

Not only, as we think, do the amendments to the Trading with the Enemy Act throw light upon what was intended by Congress should be included within the term "enemy" as defined by that act, but further light is to be had from the Act Terminating the War. (Federal Statutes Annotated, page 68.) Section 5 of that Act is as follows:

SEC. 5. *Seized property—disposition.*—All property of the Imperial German Government or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America, or of any of its officers, agents, or employees, *from any source or by any agency whatsoever*
 * * * shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law, until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government or their successor or successors, shall respectively have made suitable provision for the satisfaction of all claims against said Governments, of all

persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise. * * *

Clearly this act contemplated the retention of such property as belonged when seized to German and other enemy nationals whether in their individual or corporate capacities. Property which has come under the control of the United States "*from any source* * * * *whatsoever*" is to be retained. When this act was passed the property of this appellant and others in the same situation had been taken and was under the control of the United States and was therefore a part of the property contemplated by the Act. The Act impliedly recognizes that it was properly seized originally as the property of an "enemy" and that for that reason its retention is justified. *In any event it provides for the retention of this property.*

III

Without regard to the definition of "enemy" in the act the United States properly seized appellant's property as enemy property

There is another argument against the position taken by the appellant, the validity of which is not affected by the definition of "enemy" in Section 2 of the Trading with the Enemy Act.

The right of the United States temporarily to seize the property of an enemy in time of war certainly did not require legislative authorization, although the power to confiscate such property would under *Broœn v. United States*, 8 Cranch, 110, require such authorization.

It is self-evident, we think, that the war powers of the Executive, having their origin in the Constitution, embraced the right of temporary seizure. Being at war, seizure of enemy property, wherever situated, was within the general powers of that branch of the government charged with the conduct of war. No duty was incumbent on the Executive to inquire of Congress who were enemies, or whether those who in their individual capacities were concededly enemies were also enemies in a corporate capacity. The Executive had the constitutional right to seize the property of any enemy and to say that the property of a corporation the real ownership of which was in enemies was enemy property.

Without statutory authorization it was held in England that seizure of the property of corporations some of whose stock was owned by enemies was a proper exercise of war powers.

The question as to who is the owner of a corporation in time of war when it becomes a question of seizing property was determined by the British prize courts in several cases. In the *Steamship St. Tudno* (1916), 5 Lloyds Rep. of Prize Cas. 198 (1916 Probate 291); (86 Law Journal Probate 1), the steamship *St. Tudno* was owned by an English corporation registered in England. The ship flew the British flag. The directors of the company were partly Englishmen and partly Germans. The stock for the most part was held by Germans, and what was not actually in the name of Germans was held beneficially for them by Englishmen. The ship was chartered to a German corporation, the Hamburg-American Line. She was seized and condemnation proceedings in the Probate, Divorce, and Admiralty Division of the High Court of Justice were instituted. The ship was condemned as enemy property. Amongst other things the Court said:

Now apart from technicalities, could anybody say that this ship belonged to a British company? If it did in name belong to a British company, that covering was the merest, thinnest shell, and I must break through it, as I do break through it, in order to ascertain who the real owners of the ship were. There can be no doubt that the real owners are the Hamburg-Amerika Line and if the ship earned during the period of the war (as it has earned up till now) considerable sums, all those sums would have to be accounted for to citizens of Germany after the war. I merely point

in order to emphasize that the whole and sole ownership in the ship and everything appurtenant to it was in every real and business sense in the Hamburg-Amerika Linie.

* * * * *

Accordingly, if the case came before me upon an application by the proper officials for the forfeiture of this ship on the ground that she was not owned by a person qualified to own a British ship because the principal place of business was not in this country, I should hold in favor of the Crown and should order the forfeiture of the vessel. This is only another way of saying that I have come to the conclusion in this case that the name of the British company is a mere name, and that to the very minutest particular there was no kind of beneficial ownership of this ship vested in anybody except the Hamburg-Amerika Linie, and that its principal place of business was Hamburg.

* * * * *

The question, therefore, which is left for me to determine, namely, was this ship of enemy character and enemy property at the time of the seizure?—is one which I answer in the affirmative. She was.

See also *The Michigan*, 5 Lloyd's Prize Cas. 42, and *Daimler Co. v. Continental Tire and Rubber Co.*, decided by the House of Lords, 32 T. L. R. 624. Special attention is called to the opinion of Lord Halsbury in the case last named.

If we have been correct so far then the court will inquire not only whether the property seized in this

instance was the property of an "enemy" within the strict letter of the definition of that word in Section 2 of the Act but whether within *any* proper definition of the term enemy the appellant might properly be included. We submit that that question can not be answered otherwise than it was answered by the government when it seized the property as enemy property. Having been so seized its return is prohibited not only by the amendments to the Trading with the Enemy Act of 1920 and 1923 but by Section 5 of the Act Ending the War.

CONCLUSION

It is respectfully submitted that the decision of the Court of Appeals of the District of Columbia should be affirmed. The property seized in this instance was rightfully seized as that of an "enemy." The appellant is not one of those who are entitled to the return of property thus seized. Until Congress shall make provision for the return of this property no action lies to compel return.

JAMES M. BECK,
Solicitor General.

MERRILL E. OTIS,
Special Assistant to the Attorney General.

NOVEMBER, 1924.

APPENDIX A

Section 9 of the Trading with the Enemy Act, including the amendment of June 5, 1920, and including also the amendment of March 4, 1923. The amendment of March 4, 1923, added clauses (9), (10), and (11). The amendment of June 5, 1920, added all of subdivision (b) except clauses (9), (10), and (11).

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to

establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or

by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany, or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

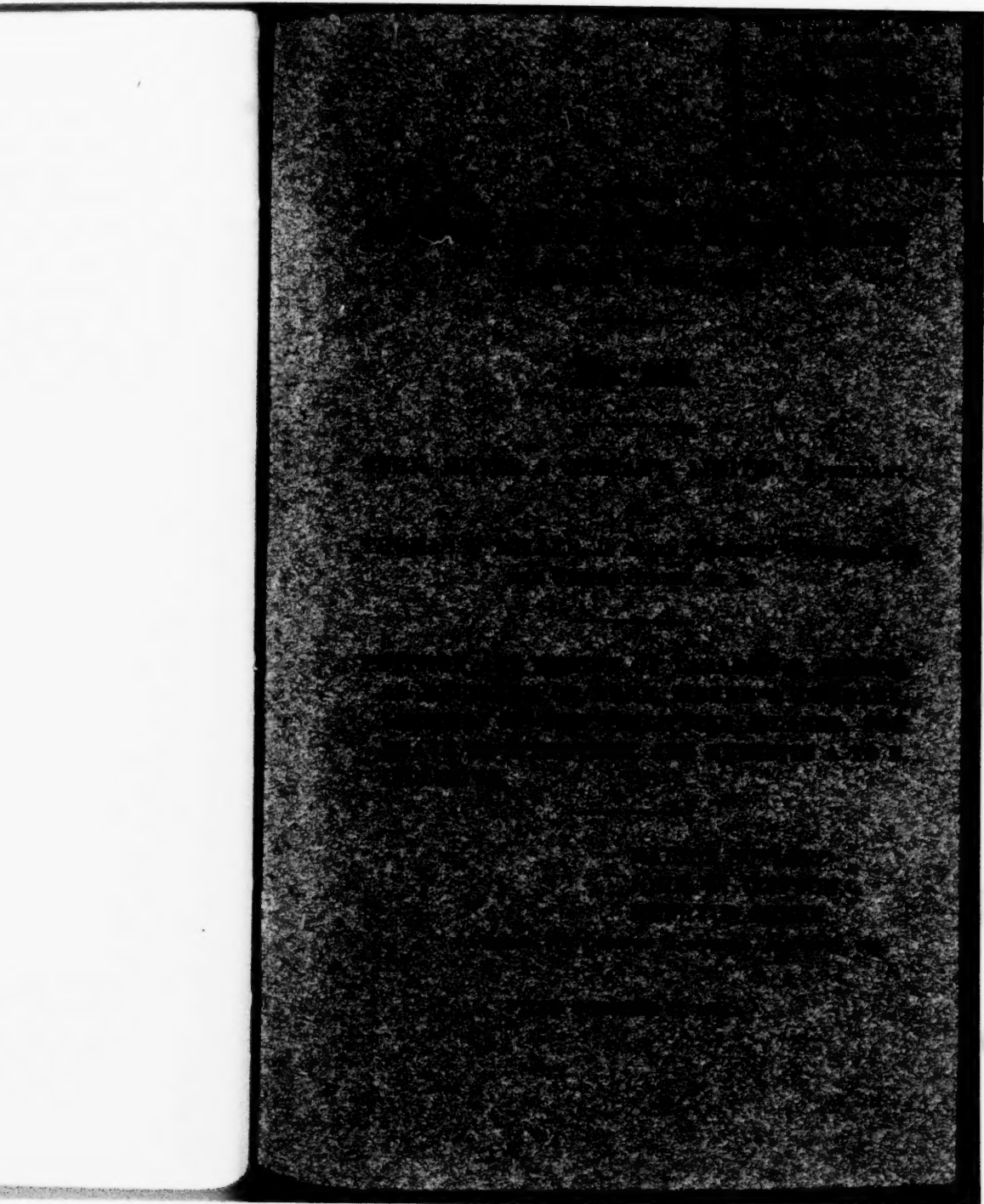
(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of \$10,000, or although exceeding in value the sum of \$10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of \$10,000: *Provided*, That no insurance partnership, association, or corporation, against which any claim or claims may be filed by any citizen of the United States with the Alien Property Custodian within sixty days after the time this paragraph takes effect, whether such claim appears to be barred by the statute of limitations or not, shall be entitled to avail itself of the provisions of this paragraph until such claim or claims are satisfied; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection—

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IN THE
SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1924.

No. 343.

BEHN, MEYER & CO., LIMITED, APPELLANT,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF
THE UNITED STATES, AND FRANK WHITE, AS TREAS-
URER OF THE UNITED STATES, APPELLEES; LAZARUS G.
JOSEPH, AS RECEIVER OF BEHN, MEYER & CO., LIMITED.

INTERVENTION.

Comes now Lazarus G. Joseph, receiver of Behn, Meyers
& Co., Limited, by his attorneys and shows:

1.

That on August 10, 1922, the said Lazarus G. Joseph was
appointed receiver of Behn, Meyer & Co., Limited, as a for-
eign corporation duly registered in and under the laws of
the Philippine Islands, and that he is still the receiver of the
said corporation.

2.

That as such receiver your petitioner has an interest in
proceedings in this Court in the matter of Behn, Meyer &

Co., Limited, against Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, being No. — of the docket of this Court, as is shown by the attached motion, which said motion is made a part hereof.

3.

That, as shown from said motion, your petitioner has a legal interest in the subject-matter of these proceedings, and that he is a proper, indispensable, and necessary party to the proceedings, and that this is a proper case for intervention.

Wherefore your petitioner respectfully prays that an order be issued permitting him to intervene in said cause for the purpose of being substituted for the plaintiff, and for such other further relief as to the Court may seem just and equitable.

Washington, District of Columbia, October 27, 1924.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as
Receiver of Behn, Meyer & Co., Limited.*

Received copy October 27, 1924.

.....,
Attorneys for the Plaintiff.

.....,
Attorneys for the Defendants.

IN THE SUPREME COURT OF THE UNITED STATES.

BEHN, MEYER & CO., LIMITED, *Appellant,*

against

THOMAS W. MILLER, *as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States, Appellees; LAZARUS G. JOSEPH, as Receiver of Behn, Meyer & Co., Limited.*

MOTION.

Comes now Lazarus G. Joseph, receiver of Behn, Meyer & Co., Limited, intervener in the above-entitled action, and, with leave of the Court first had and obtained, respectfully shows the Court as follows:

1. That in the year 1905 the corporation of Behn, Meyer & Co., Limited, was duly incorporated at Singapore, Straits Settlements, a Crown colony of the Kingdom of Great Britain; that in 1907 the said corporation duly applied to the proper authorities in the Philippine Islands to be admitted to the Philippine Islands, there to do business as a foreign corporation under and subject to the laws of the Philippine Islands; that on the 5th day of February, 1907, after having duly complied with all the requirements of the laws of the Philippine Islands, the said corporation was duly admitted and licensed to do business in the said Philippine Islands, which said business will hereinafter be referred to as Behn, Meyer & Co., Limited, of the Philippine Islands, a copy of which certificate is hereto attached, marked

Exhibit A, and prayed to be taken and read as a part hereof, and that said license or authority has never been canceled or revoked by the Government of the Philippine Islands.

2. That in the year 1914 the Government of Great Britain, acting under the laws of that country, took over and assumed control of the said corporation of Behn, Meyer & Co., Limited, at Singapore, Straits Settlements, and took over and seized all of the shares of stock of the said corporation, and has continued to hold the same, and that the same are now held by the Public Trustee of Great Britain.

3. That the said corporation of Behn, Meyer & Co., Limited, from the date of the granting to it of the license and authority to do business in the Philippine Islands as aforesaid, continued to do business in the said Philippine Islands until February, 1919; that prior to February, 1919, the agent in the Philippine Islands of said corporation, one J. M. Menzi, conducting the business of Behn, Meyer & Co. authorized to be conducted in the Philippine Islands under said license, had, with intent to defraud the said company, purported to sell to one John Bordman a large number of assets of said company, said sale not being a *bona fide* transaction, but a fraudulent device for the purpose of obtaining the assets of the business of the said corporation in the Philippine Islands; that to further defraud the said corporation in the Philippine Islands the said agent, J. M. Menzi, with the aid, connivance, and assistance of certain of the employees of the Alien Property Custodian in the Philippine Islands, caused to be paid over to the Alien Property Custodian and the Treasurer of the United States large sums of money, which sums of money are now in the Treasury

of the United States and which said sums of money were paid over without any justification or authority in law, and that, as a result of the corrupt and fraudulent practices of its said agent and others, the said Behn, Meyer & Co., Limited, of the Philippine Islands became insolvent, making the appointment of a receiver necessary, and that on the 10th day of August, 1922, Lazarus G. Joseph was duly appointed receiver of said corporation of Behn, Meyer & Co., Limited, of the Philippine Islands by the Court of First Instance of Manila, Philippine Islands, a certified copy of said appointment being hereto attached marked Exhibit "B" and prayed to be taken and read as a part hereof, and that the said Lazarus G. Joseph is still the receiver of the said Behn, Meyer & Co., Limited, of the Philippine Islands.

4. That thereafter, in the year 1922, your intervener, the said Lazarus G. Joseph, as receiver, duly filed with the Alien Property Custodian, as required by section 9 of the Trading with the Enemy Act, a sworn notice of his claim to the property and assets of the said company delivered to the said Alien Property Custodian and the Treasurer of the United States as above set forth.

5. That your intervener is not now and never has been an "enemy" or "ally of enemy" as defined by the Trading with the Enemy Act, and has never been proclaimed by the President of the United States within said terms or either of them; that your intervener has never been a resident within or incorporated within or done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war; that it is not

now and never has been a resident within any part of the territory (including that occupied by the military and naval forces) of any nation which now is or at any time since April 6, 1917, was an ally of any nation with which the United States now is or was at any time since said date was at war.

6. That your intervener is now the receiver of the said corporation of Behn, Meyer & Co., Limited, of the Philippine Islands, notwithstanding that his appointment has been attacked by utter strangers to the original proceedings and set aside by the substitute judge of the Court of First Instance of Manila during the absence of the regular judge of the Court of First Instance of Manila while on vacation in the United States, which said resolution and decision was properly and duly excepted from and properly and duly appealed to the Supreme Court of the Philippine Islands, a bill of exceptions having been properly and duly presented and having been duly and properly certified and presented to the Supreme Court of the Philippine Islands, a certified copy of said bill of exceptions being hereto attached marked "Exhibit C" and prayed to be taken and read as a part hereof, and that the said exception, appeal, presentation and perfection of the bill of exceptions stays the order of the substitute judge of the Court of First Instance of Manila under the laws of the Philippine Islands.

7. That the attorneys for your intervener did not receive the certified copy of the bill of exceptions until the month of September, 1924, and were without knowledge of these proceedings prior to the order of the substitute judge of the Court of Manila of September 27, 1923, and December 3,

1923, set out in Exhibit "C," and that they have used due and proper efforts to secure the necessary documents and evidence to present in the present proceedings.

8. That it appears upon the face of the original bill of complaint filed in the Supreme Court of the District of Columbia in this cause, in the verification of said bill of complaint, that this suit is not brought by any person with legal or lawful authority in law to bring the same, in that it appears that Emil W. Martens, who signed the said bill of complaint on behalf of Behn, Meyer & Co., Ltd., and who verified the same, was not an officer of the corporation or one duly authorized to act for it or on its behalf; that the said Emil W. Martens has never exhibited before this Honorable Court or any other court during these proceedings any power of attorney or authorization to bring this suit for or on behalf of Behn, Meyer & Co., Limited, and your intervener is informed and believes, and so believing avers, that the said Emil W. Martens has no power of attorney from the said corporation authorizing him to bring this suit for or on behalf of the corporation and is not the attorney-in-fact for the said corporation, and that certain persons who are German subjects and nationals and were and are "enemies" under the provisions of the Trading with the Enemy Act, for the purpose of obtaining and securing the possession of the property of your intervener, the subject-matter of this action, now in the Treasury of the United States, executed a power of attorney to the said Emil W. Martens in which they represented themselves to be the sole surviving stockholders of the parent corporation of Behn, Meyer & Co., Limited, and that, acting under and pursuant

to this alleged power of attorney, the said Emil W. Martens signed the said bill and the said verification; Emil W. Martens has not exhibited the power of attorney given him by the German subjects and nationals aforesaid, which said power of attorney your intervener is informed and believes is now in the office of the Alien Property Custodian in Washington.

9. That your intervener has filed in the Court of First Instance of Manila a complaint, entitled "Lazarus G. Joseph, receiver of Behn, Meyer & Co., Ltd., plaintiff, against John Bordman, J. M. Menzi, and the Bank of the Philippine Islands, defendants," complaining of fraud practiced by the said defendants, a copy of which complaint is attached hereto marked Exhibit "D" and prayed to be taken and read as a part hereof.

10. That all the money now held in the Treasury of the United States and received by the Alien Property Custodian and the Treasurer of the United States as the property of Behn, Meyer & Co., Limited, and other sums received by the Alien Property Custodian and the Treasurer of the United States from the defendants in the above-mentioned cause filed in the Court of First Instance of Manila, as set forth above, is the property of your intervener and subject to the laws of the Philippine Islands and to the jurisdiction of the Court of First Instance of Manila, Philippine Islands.

11. That the rights, if any, of the persons representing the plaintiff, or of the plaintiff Behn, Meyer & Co., Limited, to property or assets of Behn, Meyer & Co., Limited, in the Philippine Islands are subject to the exclusive jurisdiction

of the Court of First Instance of Manila, and that your intervener has the right to be substituted in place of the said plaintiff in the present cause.

Wherefore your intervener prays (1) that he be substituted for the herein plaintiff for the purpose of amending the complaint herein in the manner and form set out in the proposed amended complaint attached hereto and made a part hereof and marked for identification Exhibit "E"; (2) that the defendants herein be required to file their pleading to the amended answer as is herein set out; (3) that this Honorable Court order further proof be taken, and that a commission issue for that purpose in order that this Honorable Court may with promptness terminate this litigation without delay and unnecessary expense to the parties herein, and (4) for such other and further relief as to this Court may seem just and equitable.

Washington, District of Columbia, October 27, 1924.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as Receiver of Behn,
Meyer & Co., Limited, of the Philippine Islands.*

EXHIBIT A.

The Government of the Philippine Islands.

(Philippine Islands.)

Claim 11061.

Trust 50238.

Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

To all to whom these presents may come, Greeting:
A todos los que la presente vieren, Salud:

This is to certify That the annexed is a true and complete transcript of the

Certifico que la adjunta es verdadera y completa copia de

Articles of Incorporation and the Certificate of Registration
of "Behn, Meyer & Company, Ltd.",

which were duly filed with the Mercantile Register of the
Bureau of Commerce and Industry on the fourth
que han sido debidamente archivados en el Registro Mercantil de la Oficina de Comercio e Industria el día
day of February, Anno Domini nineteen hundred and seven.
de del Año del Señor mil novecientos.

In testimony whereof, I have hereunto set my hand and caused

En testimonio de lo cual firmo la presented con mi puno
y letra y hago
the seal of the said Register to be affixed at Manila

estampar el sello de dicho Registro en
this fifteenth day of August, Anno
hoy de del Ano

Domini nineteen hundred and twenty-two.
del Senor mil novecientos.

J. M. UNSON,
Acting Director.

Internal Revenue Tax, Philippine Islands. 20¢, Documentary.

The Government of the Philippine Islands.
Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

I, David F. Wilber, Consul General of the United States of America at Singapore, Straits Settlements, do hereby certify that the document to which this certificate is attached is a true copy of the memorandum and Articles of Association of Behn, Meyer & Company, Limited, Registered on the 11th day of December, 1905, in Singapore, Straits Settlements.

Fee \$2.00 U. S. gold, equal to \$3.60 local currency paid by affixing stamp in the original copy of the document.

Witness my hand and seal of this Consulate General this 15th day of December, 1906, at Singapore, S. S.

Fee Stamp, \$2.00.

The Government of the Philippine Islands.

Department of Commerce and Communications,
Bureau of Commerce and Industry,
Mercantile Register.

Singapore, Straits Settlements.

The Companies Ordinance, 1889.

Company Limited by Shares.

*Memorandum of Association of Behn, Meyer & Company,
Limited.*

1. The Name of the Company is "Behn, Meyer and Company, Limited."

2. The Registered Office and domicile of the Company is in Singapore, Straits Settlements.

3. The objects for which the Company is established are:

(a) To acquire and carry on the business now carried on by Behn, Meyer and Company, at Singapore, and by the Branch Houses or Agencies thereof, together with the goodwill of such business and the whole or any part of the movable and immovable property, real and personal property, and rights held and enjoyed in connection with such business, and to undertake all or any of the liabilities thereof.

(b) To enter into, adopt and carry into effect the agreements mentioned or referred to in Clause 3 of the Articles of Association of the Company, either with or without modification.

(c) To carry on business as General Merchants, Exporters and Importers, General Storekeepers, Wholesale and Retail

Traders, Shippers, Bankers, Agents for Bankers, Shipowners, Shipping Agents, Carriers, Insurers against losses of all kinds, Commission and Insurance Agents, Estate and Property Agents, Warehousemen, Lightermen, Ships' Agents, Contractors, Builders, Guarantors, Wharf and Dock Owners or Lessees, Owners or Lessees of Railways and Tramways, Owners of Mining, Planting, and other properties wherever situate, Owners or Lessees of craft, plant and appliances for Pearl Shell seeking by diving, Planters, Miners, Dealers in Shares and Stocks, Brokers, General or Special Agents or Managers at Singapore and elsewhere, whether in the Malay Peninsula or not.

(d) To buy, sell, manufacture, repair, alter, exchange, import and export and deal in all substances, articles and things capable of being used in any such businesses as aforesaid, or required for the purposes of any wholesale or retail business of the Company.

(e) To purchase, take on lease, or in exchange, build and construct upon, develop, hire, or otherwise acquire any movable and immovable property, real or personal property, and any rights or privileges, or interests, which the Company may think necessary, convenient or desirable with reference to any of these objects, and capable of being profitably dealt with in connection with any of the Company's business, property, or rights for the time being, and in particular any land, buildings, wharves, piers, docks, railways, tramways, mines, easements, concessions, patents, patent rights, or rights of an analogous character, whether British or foreign, licenses, general or special, farms, or farmed privileges, monopolies, secret processes, trade-marks, copyrights, engines, machinery, ships, boats, barges, rolling stock, plant, implements, tools, patterns of all kinds, and stock-in-trade.

(f) To purchase or otherwise acquire and hold, and to charter ships and vessels of all kinds or any interest therein.

(g) To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any person, company, syndicate or partnership carrying on any business which this Company is authorized to carry on, or possessed of property suitable for the purposes of the Company.

(h) To amalgamate or unite with or absorb into the Company any other company or association or business or the members of any other company or association wherever formed for objects similar, analogous or subsidiary to any of the objects of the Company, or carrying on any business capable of being conducted so as directly or indirectly to benefit the Company, and to form, establish and bring out, and assist in the formation or establishment of any such company or association, and to acquire, hold and deal in shares or interests therein.

(i) To enter into partnership or into any arrangement for sharing profits, union of interests, reciprocal concessions, or co-operation with any person, partnership, or company, carrying on or about to carry on any business which this Company is authorized to carry on, or any business or transaction capable of being conducted so as directly or indirectly to benefit this Company, and to take or otherwise acquire and hold shares or stock in or securities of, and to subsidize or otherwise assist any such company, and to sell, hold, re-issue, with or without guarantee, or otherwise deal with such shares or securities.

(j) To pay for any property or business or services rendered or to be rendered in shares (to be treated as either wholly or partly paid up) or debentures or debenture stock of the Company or in money or partly in shares or debentures or debenture stock and partly in money.

(k) To sell, lease, surrender, let on hire, reclaim, improve, work, manage, develop, mortgage, pledge, exchange, dispose of, turn to account, or otherwise deal with all or any of the property and rights of the Company, and to construct,

maintain, and alter or pull down any buildings, wharves, piers, or works owned by or necessary or convenient for the purposes of the Company, and grant licenses to use any inventions belonging to the Company.

(l) To sell the undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures or securities of any other company, either formed to acquire the same or having objects altogether or in part similar to those of this Company.

(m) To promote any other company for the purpose of acquiring all or any of the property, rights, and liabilities of the Company, or of advancing directly or indirectly the objects or interests thereof, or for any other purposes which may seem directly or indirectly calculated to benefit this company, and to take or otherwise acquire and hold shares, stocks, or obligations of any such company or of any other company having objects altogether or in part similar to those of this Company or carrying on any business capable of being conducted so as directly or indirectly to benefit this Company and to guarantee the payment of any debentures or securities issued by any such company and upon a distribution of assets or division of profits to distribute any such shares, stocks, or obligations, amongst the members of this Company in specie.

(n) To invest or otherwise deal with the moneys of the Company upon such security or without security and in such manner as may from time to time be determined.

(o) To lend money to such persons and on such terms, as may seem expedient and in particular to customers and others having dealings with the Company, and to guarantee or engage as security for the contracts, undertakings, responsibilities or liabilities of any person or association or company.

(p) To borrow or raise money for the purpose of the Company, receive money on deposit at interest or otherwise

and for the purpose of raising or securing money or for any other purpose to issue any mortgages, debentures, debenture stock, bonds, letters of hypothecation, or lien, or obligations of the Company, either at par premium or discount and either redeemable or irredeemable or perpetual, secured upon all or any part of the undertaking, revenue, rights and property of the Company, present and future, including uncalled capital or the unpaid calls of the Company and to exchange or vary from time to time any such securities.

(*g*) To make, accept, endorse, execute, discount, and purchase Promissory Notes, Bills of Exchange and other negotiable instruments.

(*r*) To enter into arrangements with any government or authority, supreme, municipal, local or otherwise, and to obtain from any such government or authority all rights, concessions, and privileges, that may seem conducive to the Company's objects or any of them.

(*s*) To procure the Company to be registered in any foreign country, colony or place.

(*t*) To obtain any Ordinance or Regulation in the Colony of the Straits Settlements or elsewhere for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purposes which may seem expedient, and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests.

(*u*) To establish, maintain, and work agencies or branch firms in any part of the world in connection with the business of the Company or any part thereof.

(*v*) To provide for the welfare of persons in the employment of the Company or formerly in their employment and the widows and children of such person and others dependent upon them, by granting money or pensions, providing

schools, reading rooms, places of recreation, subscribing to sick or benefit clubs or societies or otherwise as the Company shall think fit.

(w) To establish and support or aid in the establishment and support of associations, institutions, or conveniences calculated to benefit persons employed by the Company or having dealings with the Company, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or any public, general, or useful object.

(x) To do all or any of the above things in Singapore or elsewhere in any part of the world, either as principals, agents, contractors, or otherwise, and either alone or in conjunction with others, and either by or through agents, sub-contractors, trustees, corporations, or otherwise.

(y) To pay any brokerage fees, or commission to brokers for placing or obtaining subscription for any of the Company's shares or securities, and to remunerate any person or company for services rendered or to be rendered in placing any shares or securities of the Company, or in relation to the establishment of the Company, or of any company promoted by the Company.

(z) To undertake, the office of trustee, receiver and liquidator, whether official or otherwise, executor, administrator, committee, manager, attorney, delegate, substitute, treasurer, and any other offices or situations of trust or confidence, and to perform and discharge the duties and functions incident thereto and generally to transact all kinds of trust and agency business, either gratuitously or otherwise.

(zz) To do all such other things as are incidental or conducive to the attainment of the above objects or any of them, or which may be conveniently carried on and done in connection therewith, or which may be calculated directly or indirectly to enhance the value of or render profitable any business or property of the Company.

4. The liability of the members is limited.

The capital of the Company is \$2,500,000, divided into 7,500 preference shares of \$100 each, and 17,500 ordinary shares of \$100 each, with power to increase, subdivide, consolidate, or reduce; such preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of 5 per cent per annum, and shall rank both as regards dividends and capital in priority to the ordinary shares.

The shares forming the capital (original, increased or reduced) of the Company may be divided into such classes with such preferences and other special incidents, and be held on such terms as may be prescribed by the Articles of Association of the Company for the time being or otherwise.

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names:

Names, addresses, and descriptions of subscribers.	Number of shares taken by each
Ed. L. Lorenz-Meyer, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
Ad. Laspe, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
F. H. Whitthoefft, Merchant, Hamburg, by his Attorney, O. Sielcken	One.
O. Sielcken, Merchant, Penang	One.
A. G. Faber, Merchant, Singapore.....	One.
Ad. Asmus, Merchant, Penang.....	One.
F. Katenkamp, Merchant, Singapore.....	One.

Dated the eleventh day of December, 1905.

Witness to all the above signatures:

E. F. H. EDLIN,
Solicitor, Singapore.

The Government of the Philippine Islands,
 Department of Commerce and Communications,
 Bureau of Commerce and Industry,
 Mercantile Register.

No. 61.

[Seal of the Government of the Philippine Islands.]

Government of the Philippine Islands,
 Executive Bureau.

Division of Archives, Patents, Copyrights, and Trade-marks.

Whereas "Behn, Meyer & Company, Limited," a corporation organized and existing under the laws of the Straits Settlements filed upon the fourth day of February, nineteen hundred and seven, with the Division of Archives, Patents, Copyrights, and Trade-marks, of the Executive Bureau, under and in accordance with the provisions of the Act of the Philippine Commission Numbered Fourteen hundred and fifty-nine, enacted March first, nineteen hundred and six, in force April first, nineteen hundred and six, the statement required by section sixty-eight of said Act and a duly certified copy of the charter of said corporation and an order of the Secretary of Commerce and Police dated the twenty-third day of January, nineteen hundred and seven for the issuance of a license to said corporation to engage in business in the Philippine Islands, copies of which documents are hereto attached;

Now, therefore, By virtue of the powers and duties vested in me by law I do hereby license the said corporation, "Behn,

Meyer & Company, Limited," to engage in such business in the Philippine Islands as the said corporation is authorized to do under its charter and the said order of the Secretary of Commerce and Police and the Act of the Philippine Commission Numbered Fourteen hundred and fifty-nine.

In testimony whereof, I have hereunto set my hand and caused the seal of the Division of Archives to be affixed this fifth day of February, Anno Domini, nineteen hundred and seven.

[SEAL.]

(Sgd.)

M. DE YRIARTE,
Chief of Division.

EXHIBIT B.

UNITED STATES OF AMERICA,
Philippine Islands:

COURT OF FIRST INSTANCE OF MANILA, BRANCH III.

Claim 11061.

Trust 50238.

No. 14757.

BEHN, MEYER & CO., LTD., *Plaintiff,*

vs.

J. S. STANLEY ET AL., *Defendants.*

Order.

This cause came duly on to be heard this 10th day of August, 1922, before the undersigned, Judge of the above entitled court, upon the application of A. N. Jureidini & Bros., one of the defendants above named and judgment creditor in the above entitled cause, for the appointment of a Receiver by this court of the assets and estate of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor of said A. N. Jureidini & Bros., said defendant herein, and the court having considered said application and the records and files herein and it appearing to the court therefrom that executions have been issued upon said judgment, both against the plaintiff named and against its bondsmen, and that returns thereon have been made by the Sheriff of Manila showing that no property of said plaintiff or its bondsmen can be found within the jurisdiction of this court to satisfy said judgment herein and that said plaintiff has ceased to actively conduct business within the Philippine Islands and has forfeited its corporate rights so to do and is insolvent and that execution cannot be made against its bondsmen, for

the reason that they and each of them have been deported from the Philippine Islands, and no property of said bondsmen can be found within the Philippine Islands upon which to levy under said execution; and it further appearing that said plaintiff may have assets which might be applied upon the judgment herein if the same be located or brought within the jurisdiction of this court, and in order to protect the judgment creditor herein it is necessary that a Receiver be appointed to collect and preserve the assets and estate of said plaintiff, and being fully advised in the premises

It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and he hereby is appointed Receiver of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond herein in the sum of One Thousand Pesos (₱1,000.00), which may from time to time be increased upon the order of this court.

It is so ordered.

Manila, P. I., August 10, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

[Internal-revenue stamp, documentary, 20c. Canceled Aug., 1922.]

Certified correct copy Aug. 19, 1922.

JOSE CASIMIRO,

Acting Clerk of the Court,

By FAUSTINO VENZUELA,

Deputy Clerk.

C. N.

Court of First Instance, Manila, Accounting Division.
Fee Paid, ₱1.10. Official Receipt No. 234,465.

[Endorsed:] For official use only. Property of the Court of First Instance of Manila.

EXHIBIT C.

VISTO. CAL. P.

G. R. No. 22537.

THE UNITED STATES OF AMERICA:

SUPREME COURT OF THE PHILIPPINE ISLANDS.

Court of First Instance of Manila.

No. 14757.

BEHN, MEYER & Co., LTD., *Plaintiff*,

vs.

J. S. STANLEY ET AL., *Defendants*.

LAZARUS G. JOSEPH and A. N. JUREIDINI & Bros., *Appellants*,

vs.

JOHN BORDMAN, J. M. MENZI and THE BANK OF THE PHILIPPINE ISLANDS, *Interveners and Appellees*.

Bill of Exceptions.

Messrs. Schwarzkopf & Ohnick, 178 Juan Luna, Manila, for the Appellants.

Messrs. Crossfield & O'Brien, 34 Escolta, Manila, and Messrs. Hartigan & Welch, Plaza Moraga, Manila, for the Interveners and Appellees.

UNITED STATES OF AMERICA,
Philippine Islands:

IN THE COURT OF FIRST INSTANCE OF MANILA.

Civil. No. 14757.

BEHN, MEYER & CO., LTD., *Plaintiff,*

vs.

J. S. STANLEY ET AL., *Defendants.*

BILL OF EXCEPTIONS.

Be it remembered that on the dates respectively mentioned, the following proceedings were had in the Court of First Instance of Manila, to wit:

A.

That under date of February 24, 1922, a decision was rendered in the above entitled case, as follows:

(Omitting Title and Heading.)

Decision.

This is an action of replevin involving the ownership of seven cases of cotton goods originally shipped from Zurich, Switzerland, via Genoa, about July 24, 1914, on German steamer "Lutzow," consigned to plaintiff, Behn, Meyer & Company, Limited, more particularly described in plaintiff's amended complaint and in A. N. Jureidini & Bros.' answer and cross complaint.

At the outbreak of war between Germany and Great Britain in August, 1914, while *en route* to Manila, the said

steamer "Lutzow" sought refuge in the Suez Canal. The Turkish authorities ordered that said steamer should leave the Suez Canal and it was captured on the high seas by British naval forces and its cargo was landed at Port Said, Egypt. The said seven cases of cotton goods were on November 19, 1915, condemned, confiscated as lawful prize in His British Majesty's Supreme Court for Egypt, sitting at Alexandria, with Vice Admiralty Jurisdiction in prize, and were sold by the British Government at public auction to one Guido Pepe, who sold the said goods to A. N. Jureidini & Bros. of Cebu, P. I., payment therefore to be made upon delivery in Cebu. The goods were shipped by said Guido Pepe through the Egyptian Bonded Warehouses Co., Ltd., to H. B. M. British Consul for A. N. Jureidini & Bros., Cebu, P. I. (via. Manila), on the Compañia Transatlantica steamship "C. de Eizaguirre" (Exhibits A-1 and A-2). The merchandise arrived at Manila on said steamer about January 20, 1917, and while the goods were still under control of the Compañia Transatlantica de Barcelona and in the custody of the Insular Collector of Customs the plaintiff, Behn, Meyer & Co., brought this action and obtained possession of said merchandise under a writ of replevin.

This action was originally brought against the Insular Collector of Customs and the Compañia Transatlantica de Barcelona. The Insular Collector of Customs disclaimed any special interest in the goods except for the collection of the duties thereon. A. N. Jureidini & Bro., first filed a complaint in intervention claiming the ownership of the goods. Later Behn, Meyer & Co. filed an amended complaint and made said A. N. Jureidini & Bros., the Egyptian Bonded Warehouses Co., Ltd., and the British Consul at Cebu parties defendant, and A. N. Jureidini & Bros., in its answer and cross complaint alleged that in or about the month of September, 1916, the said goods were sold at Alexandria, Egypt, having been declared and adjudicated

as prize by His Britanic Majesty's Prize Court in that jurisdiction, the said goods having been property of certain German subjects and public enemies of the British Empire and its Government and found and seized by British men-of-war on an enemy ship on the high seas after declaration of war between the Government of the British Empire and the German Empire; that said goods at said sale were bought by one Guido Pepe, who, on or about November 18, 1916, sold them to A. N. Jureidini & Bros. for the sum of ₱2,000.00; that on or about December 18, 1916, the said goods were shipped by said Guido Pepe through the Egyptian Bonded Warehouses Co., Ltd., an Egyptian corporation, from Port Said, Egypt, and placed on board the S. S. "C. de Eizaguirre," of the defendant Compañia Transatlantica de Barcelona, at the custom house in Manila, for shipment to Cebu, P. I.; that on or about January 28, 1917, while the said goods were so deposited in the custom house in Manila, plaintiff took the said goods from the control of the said Compañia Transatlantica de Barcelona who made the delivery thereof to plaintiff without any right so to do, thus unlawfully depriving defendant A. N. Jureidini & Bros. of the said goods, the bills of lading of which have been indorsed to said A. N. Jureidini & Bros. by J. T. Knowles, His Britanic Majesty's Vice Consul at Cebu, P. I.; that at the time plaintiff took said goods, as above stated, they were worth about ₱10,000.00 in the city of Manila, P. I., and that A. N. Jureidini & Bros. are damaged in the sum of ₱8,000.00, more or less, and said defendant prays that plaintiff's complaint be dismissed, and that judgment be rendered against the plaintiff and the Insular Collector of Customs and the Compañia Transatlantica de Barcelona, ordering them to deliver immediately to said A. N. Jureidini & Bros. the possession of said goods and merchandise and to pay to said A. N. Jureidini & Bros., jointly and severally, the sum of ₱8,000.00, as damages, and for the additional sum of ₱2,000.00 in

case said parties should fail to make such delivery of said goods.

The Compañia Transatlantica de Barcelona, in its answer, asks that the bills of lading for the shipment of the merchandise in question on the "Code Eizaguirre" be produced and demands payment of the sum of ₧5.50 for the unlading, discharge, and landing of said merchandise.

The evidence shows that at the time of the capture by the British naval forces of the said German steamer "Lutzow" the said merchandise in question was the property of plaintiff, Behn, Meyer & Co., and the validity of the claim of A. N. Jureidini & Bros. depends entirely upon the British Prize Court proceedings, which proceedings could not be produced by A. N. Jureidini Bros. at the time of the first trial of this case, but it was made to appear that there had been prize court proceedings as to said cargo at Alexandria, Egypt, and the trial court overruled a motion to be allowed time to obtain a certified copy of the judgment of the prize court, and on February 28, 1918, rendered judgment in favor of plaintiff, Behn, Meyer & Co. Defendant A. N. Jureidini & Bros. appealed to the Supreme Court of the Philippine Islands, which held that the interests of justice required a new trial and the defendant (A. N. Jureidini & Bros.) be granted a reasonable time in which to obtain a duly certified copy of the decision of the Admiralty Court of Alexandria, Egypt, in which it was declared that the seven cases of cotton goods constituted lawful prize.

At the second trial of this case, recently, the plaintiff offered the evidence taken at the first trial, and defendant A. N. Jureidini & Bros. offered all the testimony and documentary evidence received in the first trial. Said defendant also produced, identified and offered in evidence a certified copy of the decision rendered by the British Vice Admiralty Court in Alexandria, Egypt (Exhibit R). This certified copy was objected to by plaintiff upon the ground that it is not authenticated as required by law or the rules of evidence, and

for the further reason that it is irrelevant as not tending in any way to be connected with the subject-matter of this action. Ruling on this objection was reserved. It is contended by counsel for said defendant that the decision contained in Exhibit R is duly authenticated by the Presiding Judge of the Court who rendered the said decision, and the signature of said Judge is authenticated by the American Consul at Alexandria, Egypt; that this court will take judicial notice of the official seal of the Admiralty Courts all over the world; that, as thus authenticated, said Exhibit R complies without laws, and that the decision refers precisely to the goods involved in this case.

The authentication of said Exhibit R may not be in the precise form that this court would like to have it, but in the opinion of the court it is legally sufficient, and the certified copy (Exhibit R), shows on its face that it refers to the seven cases of cotton goods involved in this case. Therefore, the objections are overruled.

The certified copy, Exhibit R, is a decision in H. B. M. Supreme Court for Egypt, Vice Admiralty Jurisdiction in prize and relates to residue of cargo ex S. S. "Lutzow," and it appears therefrom that on the 19th day of November, 1915, before His Honor Judge Grain, the judgment was entered as follows:

"Upon hearing the evidence and upon hearing His Majesty's Procurator on behalf of the Crown, it is ordered

"That the part cargo ex S/S 'Lutzow' of which particulars are given below be pronounced to have belonged at the time of seizure thereof to enemies of the Crown and as such or otherwise subject and liable to confiscation.

Particulars of Cargo.

BMC.

C.

4006.	No. 1.....	1 case cotton goods
4216.	2.....	1 " "
4386.	2.....	1 " "
4217.	2.....	1 " "

M.

2238.	3.....	1 " "
2248.	2.....	1 " "
2161.	2.....	1 " "

7 In all seven cases.

By order of the Court.

(Sgd.)

EDWARD LAFERLA,

Register."

The following certificate is written at the foot of said judgment:

"The fifteenth day of June, 1920, I, Linton Theodore Thorp, Judge of His Britannic Majesty's Supreme Court for Egypt, Vice Admiralty Jurisdiction in Prize, do hereby certify that Edward Laferla is the Registrar of this Court and that he has signed this certificate and that the attestation is in due form.

(Sgd.)

LINTON T. THORP,

Judge."

Attached to said certified copy is a certificate of the Vice-Consul of the United States of America at Alexandria, Egypt, "that Linton T. Thorp is the Judge of His Britannic Majesty's Supreme Court for Egypt, Vice Admiralty Jurisdiction in Prize," and "that to the best of my knowledge and belief

his signature appearing upon the attached document is genuine and that to his official acts full faith and credit are due."

It is an admitted fact that the steamship "Lotzow" was a German ship belonging to the North German Lloyd when she was on this voyage at the time that war broke out in 1914 between Great Britain and Germany, and the court is of the opinion that the ship and all cargo thereon belonging to Germans was subject to capture by British forces. Great Britain has had military occupation of Egypt since 1882 (Lawrence, *Principles of International Law*, 6th Ed., p. 477), and this court takes judicial notice of the fact that during the recent world war Great Britain declared and considered Egypt as part of the British Empire.

The court has no doubt as to the right of the British naval forces to capture and seize the German ship "Lutzow" and to confiscate as prize her German-owned cargo after the declaration of war in 1914 between Great Britain and Germany. The court knows from Exhibit R that there is a British Supreme Court of Egypt, sitting at Alexandria, with Vice Admiralty Jurisdiction in prize, and that the said court conducted judicial proceedings for the confiscation of the seven cases of cotton goods involved in this case. There is every presumption of the regularity of said prize court proceedings, and said prize court proceedings will be given effect by this court, in the absence of any showing of irregularity which deprived that court of jurisdiction over said goods.

Plaintiff's Exhibit M, which is the affidavit attached to the original complaint, shows the value of said goods in January, 1917, to have been approximately ₧3,500.00, and A. N. Jureidini testified that the value was ₧4,700.00.

The court therefore finds from the evidence that the seven cases of cotton goods in question were seized by Great Britain on the German steamship "Lutzow" during a state of war between Great Britain and Germany; that prize court proceedings were conducted in the Supreme — of Egypt at Alexandria, with Vice Admiralty Jurisdiction in prize; that

said goods were sold at public auction and bought by one Guido Pepe, who sold them to defendant A. N. Jureidini & Bros., to whom said Guido Pepe consigned said goods through the British Vice-Consul at Cebu, and that said A. N. Jureidini & Bros. hold the bills of lading therefor duly indorsed by His Britannic Majesty's Vice-Consul, J. T. Knowles, of Cebu; that plaintiff, Behn, Meyer & Co., lost all right and interest in said goods by capture and confiscation in time of war and sold the goods to Guido Pepe, who in turn sold them to A. N. Jureidini & Bros., to whom they were duly consigned by proper bills of lading, and that plaintiff had no legal right to take possession of said goods and receive them from the Insular Collector of Customs, and for having unlawfully taken possession of said goods plaintiff rendered itself liable to the rightful claimant under the bills of lading for any damages caused by such wrongful act. The indorsement of the bills of lading for said goods J. T. Knowles, British Vice-Consul at Cebu, and by Guido Pepe (Exhibit N) to A. N. Jureidini & Bros. entitled the latter to the possession of the goods against the plaintiff.

In view of the foregoing considerations, the court finds that defendant, A. N. Jureidini & Bros., is entitled to recover from plaintiff the seven cases of cotton goods in question in good condition or the highest value thereof from the date they were wrongfully taken by plaintiff until notice was received by A. N. Jureidini & Bros. in March, 1917, which value for the purposes of this case, the court finds was ₱3,500.00.

Therefore, judgment is hereby rendered dismissing plaintiff's complaint and absolving defendants from the demands of plaintiff, and in favor of defendant A. N. Jureidini & Bros. and against plaintiff, Behn, Meyer & Co., for the immediate delivery to said A. N. Jureidini & Bros. of the possession of said seven cases of cotton goods and merchandise, and to pay to said A. N. Jureidini & Bros. the sum of ₱1,500.00, as damages, and to pay the costs of said A. N.

Jureidini & Bros.; and it is further ordered that if the said Behn, Meyer & Co. shall fail to make delivery of said merchandise to A. N. Jureidini & Bros., the said Behn, Meyer & Co. shall pay to defendant A. N. Jureidini & Bros. in addition to said sum of ₱1,500.00, the sum of One Thousand Nine Hundred and Eighty-eight Pesos (₱1,988.00), the original cost of said A. N. Jureidini & Bros. of said goods.

The court finds that the Insular Collector of Customs had no legal right to deliver the said goods to plaintiff without the presentation and surrender of the bill of lading properly indorsed, and plaintiff did not hold the proper bill of lading and the Insular Collector of Customs would not deliver the goods to plaintiff until compelled to do so by order of a court of competent jurisdiction, and therefore the Insular Collector of Customs cannot be held responsible in any way to A. N. Jureidini & Bros. for such wrong delivery.

Therefore, the amended complaint is dismissed as against the Insular Collector of Customs, the Compañia Transatlantica de Barcelona, the Egyptian Bonded Warehouse Co., Limited, and J. T. Knowles, as His Britanic Majesty's Vice-Consul at Cebu, P. I., with their costs against plaintiff, and judgment is ordered in favor of the said Compañia Transatlantica de Barcelona and against A. N. Jueridini & Bros. for Five and 60/100 Pesos (₱5.60) for unlading, discharging, and landing of said merchandise.

It is so ordered.

Manila, P. I., February 24, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

B.

That thereafter, on or about April 6, 1922, a writ of execution was issued upon the judgment rendered in the above entitled case, but said writ of execution was returned unsatisfied on April 8, 1922. On June 8, 1922 an alias execution was issued upon the same judgment but same was likewise returned unsatisfied on June 14, 1922.

C.

Under date of August 8, 1922, the following application for the appointment of a receiver was submitted ex parte to the court in the above entitled cause.

(Omitting Title and Heading.)

Application for Appointment of Receiver.

Comes now your petitioner, A. N. Jureidini & Bros. judgment creditor in the above entitled cause, by and through their undersigned counsel, and respectfully represents to this Honorable Court:

1. That judgment was entered in the above entitled cause on the 24th day of February, 1922, in favor of your petitioner and against the plaintiff above named in the sum of ₱1,500.00, as damages, and in the further sum of ₱1,988.00 in the event that said plaintiff failed to make delivery described in said judgment to your petitioner, as appears from the decision of this Honorable Court rendered on the date aforesaid and from the records and files herein.

2. That no motion for new trial was made in said proceedings after said judgment and no notice of appeal given, nor was any appeal taken from said judgment and the same now is and long since has been and become final.

3. That subsequent to the finality of said judgment and on or about the 6th day of April, 1922, execution was issued by this Honorable Court upon said judgment, directed against said plaintiff; that thereafter and on or about the 12th day of April, 1922, the Sheriff of Manila made return upon said execution to the effect that no property of plaintiff could be found within the jurisdiction of this Court, as appears from said execution and the return thereon, records

and files of this cause; that thereafter and on or about the 8th day of June, 1922, an alias execution was issued upon said judgment, directed against the bondsmen of said plaintiff, and thereafter and on or about the 20th day of June, 1922, the Sheriff of Manila made return upon said alias execution to the effect that the bondsmen of said plaintiff had, prior to the issuance of said execution, been deported from the Philippine Islands and prior to their deportation had sold all their property into cash and that no property of said bondsmen could be found within the jurisdiction of this Court.

4. That at the time of the institution of the above entitled action and prior and subsequent thereto, plaintiff above named was a foreign corporation, authorized to do and doing business within the Philippine Islands, and having its principal place of business in the City of Manila therein, during said times conducted a large and substantial commercial business.

5. That your petitioner is informed and believes and so states the fact to be that the plaintiff above named, the judgment debtor herein, has subsequent to the institution of the above action, but prior to the rendition of final judgment herein, ceased to actively conduct its business within the Philippine Islands and has forfeited its corporate rights so to do and is involvent, but has within the Philippine Islands and within the jurisdiction of this Court sufficient assets, consisting of various and divers interest in properties and choses in action, to satisfy the judgment herein, but that the same cannot be secured to be applied upon the judgment herein without the appointment of a Receiver to collect and preserve said assets and unless a Receiver is appointed herein to so collect and preserve the assets of said judgment debtor, the plaintiff herein, the judgment of your petitioner will be and become wholly worthless and of no avail.

Wherefore your petitioner prays that a Receiver be appointed by this Honorable Court to take charge of the estate and effects of said Behn, Meyer & Co., Ltd., judgment debtor herein, and plaintiff above named, and to collect the debts and property due it and to pay the outstanding debts thereof and to divide the money and other properties that shall remain over among the stockholders or members, and for such other and further relief as the Court may deem just and equitable in the premises.

Manila, P. I., August 8, 1922.

SCHWARZKOPF & OHNICK,
By SYDNEY C. SCHWARZCOPF,
Attorneys for A. N. Jureidini & Brothers.

178 Juan Luna, Manila.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

A. N. Jureidini, being first duly sworn, upon oath states that he is the President and manager of A. N. Jureidini & Brothers, the petitioner above named, and makes this affidavit in verification of the within and foregoing application; that he has read said application, knows the contents thereof, and believes the same to be true.

(Sgd.)

A. N. JUREIDINI.

Subscribed and sworn to before me this 10th day of August, 1922. Affiant exhibited his Cedula No. F-13064, issued at Manila, P. I., Jan. 20, 1922.

(Sgd.)

BENJ. S. OHNICK.

Reg. 92, p. 24, bk. 1922.

D.

Under date of August 10, 1922, the following order was entered in the above entitled case, whereby Lazarus G. Joseph was appointed Receiver of Behn, Meyer & Co., Ltd.

(Omitting Title and Heading.)

Order.

This cause came duly on to be heard this 10th day of August, 1922, before the undersigned, Judge of the above entitled court, upon the application of A. N. Jureidini & Bros., one of the defendants above named and judgment creditor in the above entitled cause, for the appointment of a Receiver by this court of the assets and estate of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor of said A. N. Jureidini & Bros., said defendant herein, and the court having considered said application and the records and files herein and it appearing to the court therefrom that executions have been issued upon said judgment, both against the plaintiff named and against its bondsmen, and that returns thereon have been made by the Sheriff of Manila showing that no property of said plaintiff or its bondsmen can be found within the jurisdiction of this court to satisfy said judgment herein and that said plaintiff had ceased to actively conduct business within the Philippine Islands and has forfeited its corporate rights so to do and is insolvent and that execution cannot be made against its bondsmen, for the reason that they and each of them have been deported from the Philippine Islands, and no property of said bondsmen can be found within the Philippine Islands upon which to levy under said execution; and it further appearing that said plaintiff may have assets which might be applied upon said judgment herein if the same be located or brought within the jurisdiction of this court, and in order to protect the judgment creditor herein it is necessary that a Receiver be appointed to collect and preserve the assets and estate of said plaintiff, and being fully advised in the premises;

It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and hereby is appointed

Receiver of Behn, Meyer & Co., Ltd., plaintiff above named and judgment debtor herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond herein in the sum of One Thousand Pesos (₱1,000.00), which may from time to time be increased upon the order of this court.

It is ordered.

Manila, P. I., August 10, 1922.

(Sgd.)

GEO. R. HARVEY,

Judge.

E.

That on August 10, 1922, Lazarus G. Joseph, having posted a bond in the sum ₱1,000.00 as required by the Court, took his oath of office as Receiver of Behn, Meyer & Co., Ltd.

F.

Under date of September 5, 1923, Lazarus G. Joseph as Receiver of Behn, Meyer & Co., Ltd., filed the following petition:

(Omitting Title and Heading.)

Petition.

To the Honorable Judge of the above entitled Court:

Comes now your petitioner, Lazarus G. Joseph, as Receiver of Behn, Myer & Co., Ltd., and respectfully represents to this Honorable Court and shows:

That he is the duly qualified and acting Receiver of Behn, Meyer & Co., Ltd., under appointment of this Honorable Court; that one J. M. Menzi, a resident of the City of Manila, was during the years 1918-1919, a Director, Manager and stockholder of said Behn, Meyer & Co., Ltd., **he being the last known Director and Manager of said Behn, Meyer & Co.,**

Ltd., within the Philippine Islands; that said J. M. Menzi has in his possession or under his control all the books of account of said Behn, Meyer & Co., Ltd.; that your Receiver is entitled to the possession of the same and the same are necessary for the proper conduct of the Receivership and the proper winding up of its affairs in the above proceedings; that your Receiver has demanded the possession of said books of account from said J. M. Menzi, but said Menzi has failed, refused and neglected to turn over the same or any part thereof to your Receiver, and still fails, neglects and refuses so to do.

And now thereupon your receiver respectfully petitions the Court that an order enter herein directing said J. M. Menzi to be and appear before this Court at a time to be fixed in said order, there and then to show cause, if any he has, why he should not turn over and deliver unto your Receiver said books of account and the whole thereof.

Manila, September 5, 1923.

SCHWARZCOPF & OHNICK,
By BENJ. S. OHNICK,
Attorney for Petitioner.

Wise Bldg., 178 J. Luna, Manila, P. I.

PHILIPPINE ISLANDS,
City of Manila, ss:

Lazarus G. Joseph being first duly sworn upon oath, deposes and says: That he is the petitioner named in the within and foregoing petition; that he has read said petition, knows the contents thereof, and that the same is true as he verily believes.

(Sgd.)

LAZARUS G. JOSEPH.

Subscribed and sworn to before me this 5th day of September, 1923, affiant exhibiting to me his cedula No. F-2503, issued at Manila, P. I., on January 2, 1923.

(Sgd.)

MACARIO PERALTA,

Notary Public.

My Commission expires December 31, 1924.

No. 232, pg. 6, bk. 1923.

G.

On the same date, September 5, 1923, the Court, after considering the above petition, entered the following order:

(Omitting Title and Heading.)

Orden.

Dada cuenta de la petición presentada en el día de hoy por Lazarus G. Joseph, como depositario de "Behn, Meyer & Co., Ltd.," por medio de sus abogados Schwarzkopf & Ohnick, solicitando que se expida una orden disponiendo la comparecencia de J. M. Menzy para que exponga sus razones, si alguna tuviera, por qué no ha de ser ordenado para hacer entrega de todos los libros de cuentas pertenecientes a "Behn, Meyer & Co., Ltd.," a dicho Lazarus G. Joseph, como Depositario de dicha entidad.

Por la presente, se ordena que dicho J. M. Menzy comparezca ante este Juzgado el día 7 de los corrientes, a las tres de la tarde, para exponer sus razones por qué no ha de ser ordenado al efecto a entregar y poner a disposición del depositario Lazarus G. Joseph los libros de cuentas en cuestión, pertenecientes a la entidad "Behn, Meyer & Co., Ltd."

Así se ordena.

Manila, I. F., 5 de Septiembre de 1923.

(Sgd.)

ANACLETO DIAZ,

Juez.

H.

Under date of September 13, 1923, J. M. Menzi presented the following answer to the order to show cause:

(Omitting Title and Heading.)

Answer of J. M. Menzi to Order to Show Cause.

Comes now J. M. Menzi, and in answer to the order of this Honorable Court of September 5, 1923, to show cause why he should not deliver to one Lazarus G. Joseph, the alleged receiver of Behn, Meyer & Co., Ltd., in this case, the books of account of the said Behn, Meyer & Co., Ltd., which are now in his possession, to the Court respectfully states:

That on the 16th day of February, 1918, all the business and assets of the firm of Behn, Meyer & Co., Ltd., in the Philippine Islands were taken over by the Alien Property Custodian of the United States of America under and in accordance with the provisions of the Trading with the Enemy Act, and by direction of said Alien Property Custodian one W. D. Pemberton was appointed and placed in full charge of said business and assets, as receiver thereof, as shown by the letter, a copy of which is attached hereto, marked Exhibit "A," and made a part hereof;

That the business and assets of the said Behn, Meyer & Co., Ltd., including all accounts receivable, *together with* all vouchers, entries and other proofs of the indebtedness, including the books of account now in question, were completely liquidated and sold to Mr. John Bordman by the direction and under the supervision of the said Alien Property Custodian in accordance with the provisions of the Alien Enemy Act, for the sum of ₱660,000.00, as shown by the letters and bills of sale, copies of which are attached hereto, marked Exhibits "B," "C," "D" and "E" and made a part hereof;

That the proceeds of said liquidation of the business and assets of the said firm of Behn, Meyer & Co., Ltd., in the sum of ₱392,674.96 was turned over by the said W. D. Pemberton to the Alien Property Custodian of the United States, as shown by the receipt attached hereto, marked Exhibit "F," and made a part hereof, and is now in his possession;

That on the 1st day of August, 1923, the said Lazarus G. Joseph made a demand on him to deliver to him the said books of account of Behn, Meyer & Co., Ltd., and was duly informed in answer to said demand of the facts hereinbefore stated, as shown by the letters, copies of which are attached hereto as Exhibits "G" and "H," and made a part hereof;

That the said John Bordman is not now in the Philippine Islands, and the said books of account which now belong to him were left in his possession to be used in the collection of said accounts receivable which were purchased by the said Bordman from the Alien Property Custodian, as hereinbelow stated;

That the said Lazarus G. Joseph is not the legally appointed Receiver for the business and assets of the said firm of Behn, Meyer & Co., Ltd., in the Philippine Islands, as the Court under the express provisions of the Trading with the Enemy Act had no jurisdiction to appoint a receiver for such business and assets under the facts hereinbefore alleged, and the order making such appointment is absolutely void;

That on the trial of the case No. 23710, of this Court, entitled Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Ltd., vs. The Hamburg Amerika Line, the said Books of Account of Behn, Meyer & Co., Ltd., were presented in Court as evidence, and at that time the said Receiver through his counsel moved the Court to require him to deliver said books to the said Joseph and for the reason above stated the Court denied such motion;

That the said Joseph, alleging himself to be the duly appointed receiver of the business and assets of the firm of Behn, Meyer & Co., Ltd., in the Philippine Islands, has brought an

action against him, the said J. M. Menzi, the said John Borman, and the Bank of the Philippine Islands, for the purpose of attempting to set aside the said bills of sale for the said business and assets, including said books of account, and to recover the same, which said action is now pending in this Court, being No. 24892, of this Court.

That the said Joseph has brought this matter up now before this Court with full knowledge of the foregoing facts, and knowing that he has no right whatever to said books of account, and for the sole purpose of unduly molesting and troubling him, the said J. M. Menzi, without any reason whatever to do so.

Wherefore the said J. M. Menzi prays the Court for the reasons hereinbefore stated that the motion of the said Joseph that the books of account of the business of Behn, Meyer & Co., Ltd., be delivered to him, be denied, and that he have his costs in relation to this proceeding, and for such other and further relief as to the Court may seem proper in the premises.

Manila, P. I., September 13, 1923.

(Sgd.)

J. M. MENZI.

UNITED STATES OF AMERICA,

Philippine Islands,

City of Manila, ss:

J. M. Menzi, after first being duly sworn upon oath, deposes and says: That he is the person who signed the foregoing answer, and that he knows the contents thereof, and that the allegations contained therein are true, according to the best of his knowledge and belief.

(Sgd.)

J. M. MENZI.

Subscribed and sworn to before me, this 15th day of September, 1923. Affiant exhibited to me his Cedula No. F-3577, issued at Manila, January 3, 1923.

(Sgd.)

JOSE RECUENCO,

Clerk of Court.

EXHIBIT "A."

Office of the Alien Property Custodian, Room No. 214,
Masonic Temple Building, Manila.

February 16, 1918.

GENTLEMEN: You are hereby informed that Mr. W. D. Pemberton has been appointed receiver of Behn, Meyer & Co., Ltd., and will assume charge of the business and assets of said firm as a going concern, submitting weekly reports to the undersigned.

By direction of A. Mitchell Palmer, Esq.

Respectfully,

(Sgd.) FRANCIS BURTON HARRISON,
Managing Director for the Philippine Islands.

Messrs. Behn, Meyer & Co., Ltd., Manila.

EXHIBIT "B."

UNITED STATES OF AMERICA:

The Alien Property Custodian, Office of the Managing
Director in the Philippine Islands, Manila.

January 2, 1919.

DEAR SIR: A license authorizing the complete liquidation of the business of Behn, Meyer & Co., Ltd., in the Philippine Islands was granted by the War Trade Board of the United States to the company under date of March 19, 1918. I am authorized to state to you that it is the desire of this office that the liquidation be completed under this license without further delay by you, acting under your power of attorney from the Company. The liquidation should be effected by Public sale held on approximately

two weeks' advertisement. Otherwise the license will be revoked and the property sold at Public sale to produce the same effect, by this office under the Trading with the Enemy Act.

Yours very truly,
(Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

EXHIBIT "C."

UNITED STATES OF AMERICA:

The Alien Property Custodian, Office of the Managing
Director in the Philippine Islands, Manila.

January 23, 1919.

DEAR SIR: Referring to our letter to you of the second inst., I am further authorized to state to you that it is the desire of this office that the accounts receivable, belonging to the business of Behn, Meyer & Co., Ltd., in the Philippines, be sold by you, acting under your power of attorney from the Company and under the license for the liquidation of the business of Behn, Meyer & Co., Ltd., granted by the War Trade Board of the United States. This sale may be made with our approval by private sale to Mr. John Bordman, who was the purchaser of the assets of the business at public sale thereof held by you, provided you find his to be the best offer obtainable. Otherwise, the license will be revoked and the accounts receivable sold by this office under the Trading with the Enemy Act.

Yours very truly,
(Sgd.) DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

Mr. J. M. Menzi, Manila, P. I.

EXHIBIT "D."

Whereas, the undersigned, Behn, Meyer & Company, Ltd., was granted license No. Et-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which License are as follows.

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Co., Ltd., or in the alternative to perform such act as may be necessary for a complete sale, liquidation and disposition of the business; assets and property of the said Behn, Meyer & Co., Ltd., according as it may be seen advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act or any person acting on behalf of, or for the benefit of, such 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the supervision of the Alien Property Custodian, any sums due from an 'enemy' 'or on' 'ally of enemy' or person acting for, or on behalf of an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the

Alien Property Custodian and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the licensee;

"(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition, or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with Behn, Meyer & Co., Ltd., in any acts which this license may authorize the said Behn, Meyer & Co., Ltd., to undertake.

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Six Hundred Thousand Pesos (P600,000.00) Philippine Currency, to it paid by John Bordman of Iloilo, Philippine Islands, the receipt whereof is acknowledged, does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the following property, to wit:

(1) The entire stock of Textiles, Sundries, Drugs, Hardware and Chucherias in its branches located in Manila and Cebu, Philippine Islands, as per Schedule "A" hereto attached.

(2) All furniture and fittings as per Schedule "B" hereto attached.

(3) That parcel of land situated in the City of Baguio, Philippine Islands (Lot Number 16, in Residence Section "D") consisting of 9307.24 square meters, of which Behn, Meyer & Co., Ltd., is the registered owner, its title thereto being evidence by Torrens Certificate No. 247 in the land records of the City of Baguio.

(4) Trademarks as per Schedule "C" hereto attached belonging to the business of Behn, Meyer & Co., Ltd., in the Philippine Islands.

(5) The leasehold interest held by Behn, Meyer & Co., Ltd., in the Philippine Islands, Goodwill in this connection shall be understood to include all cable codes, cuts, electroplates; customer lists and all other accessories to enable the buyer to conduct the business in its accustomed way.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such property or business, or any information concerning the same.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, and in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 23rd day of January, 1919.

BEHN MEYER & CO., LTD.,
By J. M. MENZI,
Manager.

Signed in the presence of:

P. A. BEAMAN.

J. M. C. DE JESUS.

Acknowledgment.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, on this 23rd day of January, 1919, personally appeared J. M. Menzi, known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Menzi exhibited his Cedula F-11441 issued at Manila, P. I., on January 16, 1919.

Before me,

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.
 Notarial Register No. 41, P. 98, Book 4.

(20¢ Int. Rev. Stamp.)

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
 By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

CITY OF MANILA,
Philippine Islands, ss:

In the City of Manila on this 23rd day of January, 1919, personally appeared Douglas M. Moffat known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Moffat did not exhibit any cedula being exempt from this tax on account of his being a non-resident of and temporality in these Islands.

Before me,

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.

Notarial Register No. 42, p. 92, book 4.

(20¢ Int. Rev. Stamp.)

I, S. W. O'Brien, a notary in and for the city of Manila, Philippine Islands, hereby certify that the foregoing is a true and correct copy of the original thereof, which was acknowledged before me on the 23rd day of January, 1919, and with which I have compared it.

In witness whereof, I hereunto set my hand and affixed my notarial seal, this 22nd day of March, 1924.

(Sgd.)

S. W. O'BRIEN,

Notary Public.

My commission expires December 31, 1924.

Notarial Register No. 39, page 73, book VI.

EXHIBIT "E."

Whereas the undersigned Behn, Meyer & Company, Ltd., was granted License No. ET-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Strait Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Company, Ltd., or the alternative, to perform such acts as may be necessary for a complete sale, liquidation, and disposition of the business, assets, and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such

acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf of, or for the benefit of such an 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the provision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy' or person acting for, or in behalf of, an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the licensee;

"(2) The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition, or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And License is hereby granted to all persons in the United States to participate with Behn, Meyer & Co., Ltd., in any acts which this license may authorize the said Behn, Meyer & Co., Ltd., to undertake."

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Sixty Thousand Pesos (₱60,000.00) Philippine Currency, to it paid by John Bordman of Manila, Philippine Islands, the receipt of which is acknowledged, does hereby sell and convey to said John Bordman, his executor, administrators and assigns, the following accounts receivable, together with all vouchers, entries and other proofs of the indebtedness, to wit: Charge Note No. 967 re "Sachsen" Hbg/₱4.40; E. Meyer & Co. Tientsin ₱2.52; Commercial Pacific Cable Co., Manila, ₱177.36; E. Engler, Saigon, ₱50.00; R. Wesener, Tientsin, ₱30.18; Julius Norden, Hamburg ₱48.87; Thoresen & Co., Shanghai, ₱0.56; Speidel & Co., Saigon, ₱7.09; Capt. Hehenga, P/War ₱3.00; F. Bernhardt, Hamburg, ₱1,848.27; P. Wainschenk, P/War ₱322.57; A. Vellela, Manila, ₱893.50; Dietrich Brun P/War ₱14.11; J. H. Finche P/War ₱6,383.40; Cebr. Brunschweiler Hauptweil, ₱28,599.27; Alwin Raedler, Berlin, ₱278.12; A. Schonberg, P/War ₱10.00; Deutscher Maschinenbau, Pekin, ₱23,204.20; Telge & Cehroeter, Tientsin, ₱754.68; Gravenhorst & Co., New York, ₱19,392.16; Goods in Transit, ₱9,286.01; Stickerei Feldmuhle, Rohrschach, ₱628.67; Emil Lutz, Zurich, ₱178,695.82; Esslinger-Commission Receivable, ₱1,521.67; Tomoshiro Tanaka, Osaka, ₱123.40; Iwai & Co., Kobe, ₱82.68; United Alkali Co., Liverpool, ₱48.18; United Supply Co., San Francisco, ₱924.65; Pacific Mail SS Co. Claim Acct., ₱919.69; Meerkamp & Co., claim acct. ₱53.41; Smith, Bell & Co., claim acct., ₱5.10; W. F. Stevenson & Co., claim acct., ₱51.50; SS "Kadur" claim acct., ₱190.20; SS "Chines Price Q," claim acct., ₱838.98; North German Lloyd, Bremen, ₱14,713.08; Deutsch Austral. Dampfsch. Ges., Hamburg, ₱27,900.16; Deutsch Sudsee Phosphat Ges., Hamburg, ₱1,138.01; M. Jebesen, Apenrade, ₱11,625.28; Deutsche, Dampfschiffs Ges., "Hansa," Hamburg, ₱135.58; Melchers & Co., Shanghai, ₱866.82; "Albingia" Insurance Co., Hamburg, ₱1,138.03; "Alleanz" Insurance Co., Berlin,

₱55.84; Western Assurance Co., Toronto, ₱28.79; Samarang Sea & Fire Assur. Co., London, ₱43.75; North German Insurance Co., Hamburg, ₱8,707.96; Trade Debtors, ₱2,774.47; Robert Dollar Co., claim acct., ₱377.50; Dampfsch. Reederei "Union" Hamburg, ₱100.00; G. F. Scholetelborg, Seattle, ₱22,476.64; H. J. Bell & Co., Manila, ₱1,012.93; Versicherungs Gesellschaft "Hamburg," ₱38,155.47; China Mail SS Co., claim acct., ₱58.93; Ricardo Aguado, Manila, ₱1,250.00;

Cebu (per November 30th 1, 1918).—Sander Wieler & Co., Hongkong, ₱13.70; Jose Hagedorn, Cebu, ₱2,536.56; Sundry Account, ₱42.80; Outstanding Claims, ₱2,078.40; Special debtors, ₱104.14;

Iloilo (per December 31, 1918).—Refund unexpired premiums on Hamburg insurances, ₱319.45; Refund Unexpired Premiums on Lloyds Policies, ₱2,892.95; Neuss Hesslein & Co., New York (₱128.64 less Manila liability, ₱52.98) ₱75.66; Outstanding Claims, ₱167.28; goods.

Zamboanga (per December 31, 1918).—Guttapercha consigned to New York ₱342.17; Lumber consigned to London ₱4,245.07. Foreign Currency Exchange (o/Germany) ₱1,100.00; Jafee & Sons, Manchester ₱461.46; Produce Contractors ₱1,135.73; Copra vendors ₱794.12; Tow Currents Accts. (₱4,086.76 less depreciation ₱3,774.97 or ₱311.79 less payments in 1919) ₱192.79; Outstanding current accts (₱2,068.95 less depreciation ₱1,020.67) ₱1,048.28.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such accounts receivable.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 24th day of January, 1919.

BEHN, MEYER & CO., LTD.,
(Sgd.) By J. M. MENZI,
Manager.

Signed in the presence of:

(Sgd.) A. S. CROSSFIELD.
" J. MA. DE JESUS.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, of this 24th day of January 1919, personally appeared J. M. Menzi known to me to the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. He exhibit his cedula F11441 issued at Manila of January 17, 1919.

Before me,

(Sgd.) S. W. O'BRIEN,
Notary Public.

My commission expires Dec. 31, 1922.

Notarial register No. 44, p. 92, book IV.

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila on this 24th day of January, 1919, personally appeared Douglas M. Moffat, known to me to be the same person who executed the foregoing approval and acknowledged the same to be his free act and deed. He

did not exhibit a cedula being exempt from this as on account of being a non-resident of and but temporarily in the Philippines.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires Dec. 31, 1920.

Notarial Register No. 47, p. 93, book IV.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

I, S. W. O'Brien, a Notary Public in and for the City of Manila, Philippine Islands, hereby certify that the foregoing is a true and correct copy of the original thereof, which was acknowledged before me on the 24th day of January, 1919, and with which I have compared it.

In witness whereof, I have hereunto set my hand and affixed my Notarial Seal, this 22nd day of March, 1923.
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31.

Notarial Register No. 40, p. 73, book IV.

EXHIBIT "F."

UNITED STATES OF AMERICA:

The Alien Property Custodian.

Office of the Managing Director in the Philippines, Manila.

February 28th, 1919.

Mr. W. D. Pemberton, receiver Behn, Meyer & Co., Ltd.,
Manila, P. I.

DEAR SIR:

Report: 50426; Reporter: Behn, Meyer & Co., Ltd., Manila,
P. I.Trust: 50238; Enemy: Behn, Meyer & Co., Ltd., Singapore,
S. S.I wish to acknowledge receipt of ₱392,674.96 in this case,
paid in answer to our demand dated February 21st, 1918.Formal acquittance will be mailed you direct from our
Washington office.

Yours truly,

DOUGLAS M. MOFFAT,

Managing Director for the Philippine Islands,

(Sgd.)

By P. B. POPR.

PHILIPPINE ISLANDS,

*City of Manila, ss:*I hereby certify that I have carefully compared the
foregoing with the original and that the foregoing is a true,
correct and accurate copy of its original.In witness whereof I have hereunto set my hand and
affixed the seal of my office at Manila, P. I., on the — day
of —, 1923.

No. —, page —, book —.

EXHIBIT "G."

Lazarus G. Joseph.

Manila, P. I., August 1st, 1923.

Mr. J. M. Menzi, Manila, P. I.

SIR: As the receiver of Behn, Meyer & Co., Ltd., and inasmuch as you have testified in Court that the books of accounts of the said firm are in your possession, will you kindly turn the same over to me.

As receiver of Behn, Meyer & Co., Ltd., I am the legal depository of the said books and request that you indicate the time when I may go to your office to receive the said books.

Very respectfully,
(Sgd.) LAZARUS G. JOSEPH,
Receiver for Behn, Meyer & Co., Ltd.

EXHIBIT "H."

Manila, P. I., August 3, 1923.

Mr. Lazarus G. Joseph, Manila, P. I.

DEAR SIR: I beg to acknowledge receipt of your letter of August 1, 1923, requesting me to turn over to you the books of accounts which formerly pertained to Behn, Meyer & Co. Ltd.—I regret to inform you that I cannot comply with your request as these books pertain to the business which was formerly purchased (by John Bordman from the Alien Property Custodian of the United States), and were delivered by the Alien Property Custodian to him, as evidence of the outstanding accounts of the business of Behn, Meyer & Co., Ltd., which were purchased by the said John Bordman. These outstanding accounts are being liquidated,

and it is unnecessary for me to say that these books are necessary as evidence and in liquidation of these accounts. Furthermore, I cannot recognize your right to have possession of these books; first, for the reasons which I have above stated, and secondly, that I do not consider you, under the law, as the legally appointed Receiver for the business of Behn, Meyer & Co. Ltd., as that business was liquidated by the Alien Property Custodian of the United States, and finally sold. You will recall that in the case which you brought against the Hamburg Amerika Line, your counsel requested the Court to turn over these books to you, which request was denied by the Court.

Yours respectfully,
(Sgd.)

J. M. MENZI.

I.

Under date of September 14, 1923, John Bordman, J. M. Menzi and the Bank of the Philippine Islands filed a motion to intervene, and a motion to vacate order appointing Lazarus G. Joseph as Receiver of the plaintiff, in the following tenor:

(Omitting Title and Heading.)

Motion to Intervene.

Come now John Bordman, J. M. Menzi, and the Bank of the Philippine Islands through their undersigned attorneys, and hereby move the Court for permission to intervene in the receivership proceeding in above-entitled action solely for the purpose of the motion to vacate the order of August 10, 1922, appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., the original of which said Motion is attached hereto and made a part hereof. That as shown from said motion, these parties have a legal interest in the subject-matter of said receivership and an interest against that of the parties to said proceeding.

Wherefore the above-named parties respectfully pray the Court that an order issue, permitting them to intervene in said receivership proceeding in this case solely for the purposes of the motion to vacate the order of August 10, 1922, appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., and for such other relief as to the Court may seem to be just and equitable.

Manila, P. I., September 14, 1923.

	CROSSFIELD & O'BRIEN,
(Sgd.)	By S. W. O'BRIEN,
	<i>Attorney for John Bordman and</i>
	<i>J. M. Menzi, 34 Escolta, Manila.</i>
(Sgd.)	HARTIGAN & WELCH,
	<i>Attorneys for Bank of the P. I.</i>

(Omitting Title and Heading.)

Motion to Vacate Order Appointing Lazarus G. Joseph as Receiver of Behn, Meyer & Co.

Come now John Bordman, J. M. Menzi, and the Bank of the Philippine Islands, intervenors in the above-entitled action, through their undersigned attorneys, and with the permission of the Court first had and obtained, hereby move this Honorable Court that the order of August 10, 1922, in the above-entitled action, appointing Lazarus G. Joseph as Receiver of Behn, Meyer & Company, Ltd., on the *ex parte* petition of A. N. Jureidini & Bros., be vacated and set aside for the following reasons:

That on the 16th day of February, 1918, all the business and assets of every nature of the firm of Behn, Meyer & Company, Ltd., in the Philippine Islands, were taken over by the Alien Property Custodian of the United States of America under and in accordance with the provision of the Trading with the Enemy Act, and by direction of said Alien

Property Custodian, one W. D. Pemberton was duly appointed under said Act and placed in full charge of said business and assets as a Receiver thereof marked Exhibit "A," and made a part hereof;

That thereafter all the business and assets of the said Behn, Meyer & Co., Ltd., including the good-will, trade-marks, accounts receivable, together with all vouchers, entries, and other proofs of the indebtedness such as the books of account, etc., were completely liquidated and sold to one of the intervenors herein, John Bordman; by the direction and under the supervision of the said Alien Property Custodian, in accordance with the provisions of the Alien Enemy Act, for the sum of ₱660,000.00, as shown by the letters and bills of sale, copies of which are attached hereto, marked Exhibits "B," "C," "D" and "E" and made a part hereof;

That the intervenor herein, The Bank of the Philippine Islands, advanced to the said John Bordman the said sum of ₱660,000.00, with which to purchase the said business and assets of the said Behn, Meyer & Co., Ltd., which sum was turned over to the Receiver of the said Alien Property Custodian;

That the proceeds of the said liquidation of business and assets of the said firm of Behn, Meyer & Co., Ltd., by the said Alien Property Custodian, as hereinbefore stated, in the sum of ₱392,664.96, was upon demand turned over by his said receiver W. D. Pemberton, to the said Alien Property Custodian of the United States in accordance with the provisions of the Trading with the Enemy Act, as shown by the demand and the receipt attached hereto, marked Exhibits "F" and "G," and made a part hereof, and is now in his possession;

That as shown by the record of the above-entitled action, the said firm of Behn, Meyer & Co., Ltd., on or about the 23rd day of January, 1917, brought the above entitled action against the then Insular Collector of Customs, J. S. Stanley, to recover from him the possession of certain merchandise

then in his possession. A. N. Jureidini & Bros. intervened in the case, claiming title to the said merchandise. After the case was duly tried, the Court on February 28, 1918, entered judgment in favor of the said Behn, Meyer & Co., Ltd., for the delivery of said merchandise to it, upon paying certain charges against it. In accordance with this judgment, the merchandise was delivered to the said Behn, Meyer & Co., Ltd., and passed into the hands of the said Alien Property Custodian. The said A. N. Jureidini & Bros. appealed from said judgment to the Supreme Court of the Philippine Islands, which Court reversed the judgment of the lower Court and returned the record for a new trial. A new trial was held and on the 24th day of February, 1922, judgment was entered in favor of the said A. N. Jureidini & Bros. and against the said Behn, Meyer & Co., Ltd., for the sum of ₱1,988.00, as damages, and in the further sum of ₱1,988.00 in the event that the said merchandise was not delivered to it as the value thereof. Execution was taken out by the said A. N. Jureidini & Bros., and placed in the hands of the Sheriff of Manila, who returned the same unsatisfied;

That with full knowledge of the facts alleged in paragraphs 2, 3, 4 and 5 hereof, the said A. N. Jureidini & Bros., through its counsel, filed an *ex parte* petition in this case on August 8, 1922, alleging among other things that—

“4. That at the time of the institution of the above entitled action and prior and subsequent thereto, plaintiff above named was a foreign corporation, authorized to do and doing business within the Philippine Islands, and having its principal place of business in the City of Manila therein, and during said times conducted a large and substantial commercial business.

“5. That your petitioner is informed and believes and so states the fact to be that plaintiff above named, the judgment debtor herein, has subsequent to the institution of the above action, but prior to the ren-

dition of the final judgment herein, *ceased to actively conduct its business within the Philippine Islands, and has forfeited its corporate rights so to do and is insolvent*, but has within the Philippine Islands, and within the jurisdiction of this Court sufficient assets, consisting of various and divers interest in properties and choses in action, to satisfy the judgment herein, but that the same can not be secured to be applied upon the judgment herein without the appointment of a Receiver to collect and preserve said assets and unless a Receiver is appointed herein to so collect and preserve the assets of said judgment debtor, the plaintiff herein, the judgment of your petitioner will be and become wholly worthless and of no avail."

It then prays for the following relief:

"Wherefore, your petitioner prays that a Receiver be appointed by this Court to take charge of the estate and effects of said Behn, Meyer & Co., Ltd., judgment debtor herein and plaintiff above named, and to collect the debts and property due it and to pay the outstanding debts thereof and to divide the money and other properties that shall remain over among the stockholders or members, and for such other and further relief as the Court may deem just and equitable;"

That upon such *ex parte* petition of the said A. N. Jureidini & Bros., the Court on the 10th day of August, 1922, made and entered the order now complained of, the dispositive part of which is as follows:

"It is now considered and ordered that Lazarus G. Joseph of Manila, Philippine Islands, be and he hereby is appointed Receiver of Behn, Meyer & Co., Ltd., plaintiffs above named and judgment debtor

herein, its property, assets and estate, with such powers as are prescribed by statute, upon his giving and filing a bond here in the sum of One Thousand (P1,000.00) Pesos, which may from time to time be increased upon the order of this Court.

"It is so ordered.

"Manila, P. I., August 10, 1922.

(Sgd.)

"GEO. R. HARVEY,

"Judge."

That the said Lazarus G. Joseph, alleging himself to be the regularly and legally appointed Receiver of the property, assets and estate of the said Behn, Meyer & Co., Ltd., and with full knowledge of the facts hereinbefore alleged, on the 4th day of September, 1923, commenced an action in the Court of First Instance of Manila against the intervenors herein, the said John Bordman, and The Bank of the Philippine Islands, and J. M. Menzi, to annul the said sales made by the direction and under the supervision of the said Alien Property Custodian of the United States under the Trading with the Enemy Act, Exhibits "D" and "E," attached hereto, and to recover back the property sold by that official, being case No. 24892, of this Court, the prayer of his complaint being as follows:

"Therefore, the plaintiff herein prays:

"That in the first cause of action above set forth that the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys and or property received by the said defendants and or any of them, directly or indirectly, from assets belonging to the said firm Behn, Meyer & Co., Ltd., on January 31, 1917, or at any subsequent time;

"That the Court declared that the alleged bill of sale (Exhibit A) (*Exhibit D herein*) made by the defendant J. M. Menzi and in favor of the said defend-

ant John Bordman, to be null and void and of no effect;

"That the Court order that the defendants, and each of them to deliver to the plaintiff the property taken by defendants or any of them in pursuance to the said alleged Bill of Sale (Exhibit A), and that in the event that the said defendants or any of them have not possession of the aforesaid property, then, in that event, the Court order the defendants, and each of them severally to pay the plaintiff the value of said property and/or any and all sums of money collected by them or any of them from the sale or disposal of the aforesaid property or assets and together with interest on the value of the said property at the rate of 6% per annum from the 19th day of March, 1918;

"For such other relief as the Court deems just and equitable and for the costs of this action.

"That in the second cause of action the Court order the defendants, and each of them severally, to render a true and correct account of any and all money received by the said defendants, or any of them severally or jointly, in virtue of or in pursuance of the said document, Exhibit B, or in any other manner, any sums of money, credits or promises, directly or indirectly, from any accounts or choses in action belonging to the said Behn, Meyer & Co., Ltd., on March 19, 1918, or at any subsequent date;

"That the Court order and declare that the said alleged bill of sale (Exhibit B) (*Exhibit E herein*) made by the defendant J. M. Menzi in favor of the said defendant John Bordman, is null and of no effect;

"That the Court order the defendants, and each of them severally, to pay to the plaintiff any and all amounts, collected or received by the defendants, or any of them jointly and/or severally, for all or any

of the alleged accounts receivable, and interest at the rate of 6% per annum of the total amount of the said accounts receivable as shown by Exhibit B, from the 19th day of March, 1918.

"For such other relief as this Court shall deem just and equitable, and for costs of this action."

That Sec. 7, of the Trading with Enemy Act as amended November 4, 1918, which was expressly extended to the Philippine Islands, provides as follows:

"The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this act, and in the event of sale or other disposition of such property by the Alien Property Custodian shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States."

That according to the express provisions of the Trading with the Enemy Act, as above shown, the sole relief and remedy of the said A. N. Jureidini & Bros., a creditor of the said Behn, Meyer & Co., Ltd., is that provided in said act itself, namely, Section 9 thereof, which, as amended, provides that anyone "not an enemy or ally of enemy" claiming any interest, right, or title in any money or other property so sequestered and held, may give notice of his claim and itself, namely, Section 9 thereof, which, as amended, pro-institute a suit in equity against the Custodian or the Treasurer, as the case may be, to establish and enforce his claim; and where suit is brought, the money or property is to be retained by the Custodian or in the Treasury, to abide the final decree, and said section further provides:

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or *subject to any order or decree of any court.*" See —

That the District Courts of the United States are the only Courts given jurisdiction to entertain the action provided for in Sec. 9, of said Act, as shown by Section 17 thereof.

"That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order of decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

That the only jurisdiction given to the courts of First Instance in the Philippine Islands is in regard to criminal offenses under said Act, as shown by Section 18 thereof.

That in view of the fact all the business and assets of the said firm of Behn, Meyer & Co., Ltd., were taken over by the said Alien Property Custodian under the provisions of the Trading with the Enemy Act, and liquidated and sold by him and the proceeds of such liquidation being now in his possession and where it was at the time the said Receiver in this case was appointed the Court under the express provisions of that Act had no jurisdiction to appoint a Receiver for the business and assets of said firm at the instance of a creditor of the same, whose only remedy is that provided in

Sec. 9, of that Act, and the order of August 10, 1922, appointing such a Receiver is absolutely null and void.

Wherefore these intervenors respectfully pray the Court that the order of this Court under date of August 10, 1922, appointing the said Lazarus G. Joseph as the Receiver of the property assets, and estate of Behn, Meyer & Co., Ltd., be immediately vacated and set aside on the ground that the said A. N. Jureidini & Bros., under the circumstances had no right to apply for such receivership under the law and that the Court had no jurisdiction to make such an appointment, and consequently its order is null and void, and that these intervenors have and recover their costs from the said parties responsible for the appointment of such Receiver, and for such other and further relief as to the Court may seem just and equitable.

Manila, P. I., September 14, 1923.

CROSSFIELD & O'BRIEN,

(Sgd.) By S. W. O'BRIEN,

*Attorneys for Intervenors J. M. Menzi and
John Bordman, 34 Escolta, Manila.*

(Sgd.) HARTIGAN & WELCH,

*Attorneys for Intervenor
The Bank of the Philippine Islands.*

UNITED STATES OF AMERICA,

Philippine Islands,

City of Manila, ss:

J. M. Menzi, after first being sworn upon oath, deposes and says: That he is one of the intervenors in the receivership proceedings in the above-entitled action, that he has read the motion set out above to vacate the order appointing a Receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., and knows the contents thereof; that the allegations contained therein are true, according to the best of his knowledge and belief.

(Sgd.)

J. M. MENZI.

Subscribed and sworn to before me, this 15th day of September, 1923. Affiant exhibited to me his cedula No. 3577, issued at Manila, January 3, 1923.

(Sgd.)

EUGENIO ANGELES,

Notary Public.

My commission expires December 31, 1924.

Notarial Register No. 350, page 71, book II.

(NOTE.—For Exhibits "A", "B", "C", "D", "E" and "G" of the foregoing motion, see: Exhibits "A", "B", "C", "D", "E" and "F" and of the "Answer of J. M. Menzi to the Order to Show Cause," supra).

EXHIBIT "F."

A. C. Form No. 106-B—Short Demand for Money and Property.

Report No. 50426, P. I.

Trust No. 50238, P. I.

Original.

Alien Property Custodian.

Demand by Alien Property Custodian for Property.

Extracts from "Trading with the Enemy Act."

SEC. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

SEC. 7 (e). "No person shall be held liable in any court, for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharged for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligations, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918.

SEC. 1 (c). "The words 'right,' 'title,' 'estate,' 'power,' and 'authority' of the enemy, as used herein shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the money or other person claiming under or in the right of, or of the benefit of, the enemy."

SEC. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

SEC. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the Trading with the Enemy Act, and with any orders, rules or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

Mr. W. D. Pemberton, receiver Behn, Meyer & Co., Ltd.:

Address: Manila, P. I.

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive orders, after investigation do determine that:

(Name of enemy or ally of enemy:) Behn, Meyer & Co., Ltd., whose address is (Last known address:) Singapore, Strait Settlements, is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money, and property mentioned and particularly described in your report to the Alien Property Custodian, dated February 19th, 1919, as owing or be-

longing to, or held for, by on account of, or on behalf of, or for the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law.

The ——— is hereby designated as depository, and is authorized to receive for and on behalf of the Alien Property custodian, the property herein mentioned, and upon the service of this demand on you by said depository you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depository, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 21st day of February, 1919.

A. MITCHELL PALMER,

Alien Property Custodian.

DOUGLAS M. MOFFAT,

(Sign.)

By P. B. P.,

Managing Director for the Philippine Islands.

(Omitting Title and Heading.

Notification.

To A. N. Jureidini & Bros. and Lazarus G. Joseph, alleged receiver of Behn, Meyer & Co., Ltd., or their attorneys, Messrs. Schwarzkopf & Ohnick:

You will please take notice that on Tuesday, September 18, 1923, at 8:30 a. m., or as soon thereafter as counsel may

be heard, the undersigned will move the Court to hear and decide the motion to intervene attached hereto, and, if such motion is granted, immediately thereafter the motion vacate the order appointing a receiver for the property, assets and estate of Behn, Meyer & Co., Ltd., also attached hereto, will be submitted to the Court for hearing and decision.

Manila, P. I., September 14, 1923.

(Sgd.) CROSSFIELD & O'BRIEN,
By S. W. O'BRIEN,
Attorneys for John Bordman and
J. M. Menzi, 34 Escolta, Manila.
(Sgd.) HARTIGAN & WELCH,
Attorneys for the Bank of the P. I.

Received copy of foregoing notification, copy of motion to intervene, and copy of motion to vacate order appointing receiver of Behn, Meyer & Co., Ltd.

Law offices of—

SCHWARZKOPF & OHNICK,
(Sgd.) By FLOR. VALBUENA,
Attorneys for A. N. Jureidini & Bros. and
Lazarus G. Joseph.

September 15, 1923.

J.

Under date of September 17, 1923, an opposition was filed to the foregoing motions of the intervenors in the following tenor:

(Omitting Title and Heading.)

Opposition to Motion of John Bordman, J. M. Menzi, and Bank of the Philippine Islands.

Come now A. N. Jureidini & Bros. and Lazarus G. Joseph as Receiver of Behn, Meyer & Co., Ltd., through their undersigned attorneys, and in opposition to the motion filed herein

by one John Bordman, one J. M. Menzi and the Bank of the Philippine Islands, respectfully submits that the facts stated in support of said motion are not sufficient to permit in intervention in the above entitled proceedings.

It appears from said motion that the sole purpose of the desired intervention is to set aside the order heretofore entered in the above cause appointing a Receiver of said Corporation. The motion to intervene is so preposterous and absurd that the same may be disposed of with brevity.

It will be noted that the purported intervenors do not claim any interest in the proceedings favorable either to the plaintiff or the defendant, and therefore, may not intervene as a defendant or plaintiff. They claim an interest adverse to all of the parties to the action, the exact nature of adversity not being set forth in the supporting statement.

It seems to be their contention that John Bordman and J. M. Menzi purchased certain assets of Behn, Meyer & Co., Ltd., through a conveyance which the Receiver has charged in a separate action filed in the Court of First Instance for the City of Manila to have been fraudulent. To support this contention, portions of the complaint have been set forth as also two alleged Bills of Sale, using among other things the respective expressions:

"Does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the *following accounts* receivable, together with all vouchers, entries and other proofs of the indebtedness, *to wit*—"

and

"Does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the *following property, to wit*:—"

after each of which specific properties, the alleged subject matter of the sales described. In other words, they claim

that they purchased certain particular properties which at one time belonged to Behn, Meyer & Co., Ltd. To here deny the validity of any title which they may have received by virtue of said alleged bills of sale is unnecessary for the reason that one suit, being civil cause No. —, has already been filed by the Receiver against the persons making application to intervene herein.

But assuming for the sake of argument that these parties have purchased certain properties that heretofore belonged to Behn, Meyer & Co., Ltd., that in itself does not give the movers in the motion for intervention any right whatsoever to intervene in this cause or to attack the appointment of a Receiver of Behn, Meyer & Co., Ltd. and its assets. If the bills of sale which the movers claim they hold be valid, the Receivership cannot extend to or cover any of said properties. But the receivership does cover corporate entity of Behn, Meyer & Co. Ltd. and all assets which it may have. What right has Mr. Menzi or the Bank of the Philippine Islands to obstruct, for instance, the collection of the judgment which A. N. Jureidini & Bros. has against Behn, Meyer & Co., Ltd., or what right does Menzi or the Bank of the Philippine Islands have to prevent the Receivership collecting the individual just claims of Messrs. Crossfield & O'Brien, Attorneys-at-Law, from Behn, Meyer & Co., Ltd., through the receivership proceedings?

So far as Menzi *et al.* are concerned, they are utter strangers to the above proceedings and have no legal interest whatsoever in the above proceedings.

Why should the Bank of the Philippine Islands, Menzi and Bordman seek to intervene in these proceedings? There is only one answer: the Receiver has heretofore applied to this Honorable Court to compel Bordman to surrender up the books of account of Behn, Meyer & Co., Ltd., the possession of which rightfully belongs to the Receiver. This attempted intervention is nothing more than an attempt to confuse the mind of the Court upon the issue as to whether

or not the books should be surrendered to the Receiver. They must be afraid of the facts which the books of account of Behn, Meyer & Co., Ltd. will disclose.

It is true also that the Receiver has brought suit against these parties alleging fraudulent transactions. The outcome of that suit will be determined by the merits. They are hollering before they are hurt, but really it would seem that they anticipate an adverse outcome to that suit unless they may be permitted to attack the Receiver herein, whose sole purpose is to conserve for the creditors and stockholders of Behn, Meyer & Co., Ltd., any assets that the Corporation might have.

It is well settled that a creditor, stockholder or bond holder may not intervene in a suit for the purpose of attacking the jurisdiction of the Court to appoint a Receiver or to question the propriety of the appointment (34 Cyc., 161). Neither Brodman, Menzi or the Bank of the Philippine Islands are creditors, bondholders or stockholders of Behn, Meyer & Co., Ltd., according to the motion for intervention. They and each of them are the rankest strangers to these proceedings.

The records and files in this case disclose the fact that Lazarus G. Joseph was appointed Receiver of Behn, Meyer & Co., Ltd., strictly in accordance with the statutes in such cases made and provided and no facts whatsoever have been set forth in the so-called motion to discharge the Receivership attached to the motion for intervention which in any way impugn the jurisdiction of the Court of First Instance for the City of Manila to appoint a Receiver.

Manila, September 17, 1923.

SCHWARZKOPF & OHNICK,
By BENJ. S. OHNICK,
Attorneys for Receiver of Behn, Meyer & Co., Ltd.

Wise Bldg., 178 J. Luna, Manila.

K.

Under date of September 25, 1923, the following resolution was entered in this case:

(Omitting Title and Heading.)

Resolución.

Tres mociones hay en autos que requieren resolución: la de Lazarus G. Joseph que pide en su concepto de Depositario Judicial designado para hacerse cargo de los bienes de la demandante, una orden para obligar a J. M. Menzi a que le haga entrega de los libros de dicha demandante, que Menzi que pide le denegación de dicha petición; y la de John Bordenman, J. M. Menzi y "The Bank of the Philippine Islands" para intervenir en estas actuaciones con el objeto de pedir que se deje sin efecto la orden del Juzgado de 10 de Agosto de 1922, que nombra a dicho Lazarus G. Joseph como Depositario Judicial en esta causa.

Un examen de los autos demuestra que habiendo obtenido sentencia A. N. Jureidini & Bros. contra la demandante, en 24 de Febrero de 1922, por la cantidad de ₱3,488.00 y las costas, solicitó y obtuvo un mandamiento de ejecución de dicha sentencia, el 6 de Abril del expresado año. Habiéndose devuelto el mandamiento expedido al efecto por el Sheriff con el informe de que no le habia sido posible hallar dentro de la jurisdicción del Juzgado, propiedades de ninguna clase de la sentencia, obtuvo,—bajo la alegación de que había descubierto que dicho demandante tenía aun suficiente bienes en las Islas—, el nombramiento de un depositario el 10 de Agosto de 1922, habiendo sido designado para dicho cargo Lazarus G. Joseph. El depositario así nombrado ha pedido después que J. M. Menzi, en cuyo poder se hallan los libros que un tiempo pertenecieron a la demandante, fuese ordenado a hacerle entrega de dichos libros, alegando que es para

cumplir mejor con su cometido y ultimar las trámites necesarios en esta causa.

J. M. Menzi, en una contestación muy extensa a la orden dirigida a él requiriéndole a exponer sus razones por que no debía ser ordenado conforme lo pide el depositario, pidió lo que expresan sus mociones de que al principio de la presente se ha hecho mencionado.

Es un hecho que se desprende de los documento que acompañan a las referidas, mociones de dicho Menzi, de John Bordman y de The Bank of the Philippine Islands, que han solicitado permiso para intervenir en estas actuaciones para el fin ya mencionado, que actualmente obran en poder de dicho Menzi los libros de cuentas que un tiempo pertenecieron a la demandante Behn, Meyer & Co., Ltd. Llegó a tomar posesión de dichos libros por haberselos entregado a él, John Bordman, que había comprado todas las propiedades derechos y acciones y aun los papeles y libros de cuentas de la mencionada demandante.

Se desprende, además, de dichos documentos los que, dicho sea de paso no han sido impugnados ni contradichos por Lazarus Joseph, que hacia el 16 de Febrero de 1918, o sea, cuatro años, poco más o menos antes de obtener A. N. Jureidini & Bros. la aludida sentencia a su favor contra la mencionada demandante, el Custodio de Bienes de Extranjeros en Filipinas nombrado de conformidad con las disposiciones de la Ley del Congreso de los Estados Unidos de 12 Octubre de 1917, intitulada "Ley que define, regula y castiga el comercio con el enemigo etc.," designó a W. D. Pemberton como depositario de todas las propiedades de dicha demandante. Con posterioridad a la indicada fecha, y previa licencia concedida al efecto por el director genrente en las Islas Filipinas del Custodio de Bienes de Extranjeros, se vendieron todas propiedades incluyendo las marcas, cuentas cobrables, comprobantes de pago y otros documentos acreditativos de crédito, y los libros de cuentas de la referida demandante, a John Bordman, bajo la dirección y supervisión del mismo

Custodio de Bienes de Extranjeros en Filipinas por la cantidad de ₱660,000.00, cantidad que le fué abonada por "The Bank of the Philippine Islands," habiéndose entregado la cantidad de ₱392,674.96 que es a la que asciende el producto de la liquidación de dichos bienes, al Custodio de Bienes Extranjeros.

Siendo estos los hechos, y disponiendo como dispone la citada Ley del Congreso de los Estados Unidos de 12 de Octubre de 1917, en su artículo 17, que los Tribunales de los Estados Unidos son los únicos que tienen jurisdicción para conocer de asuntos a que han dado o puedan dar lugar algunos o alguno de los hechos allí previstos, o de igual carácter al de Jureidini & Bros. de que aquí se trata, pues como expresamente reza el artículo 18 de la mencionada ley, la jurisdicción de los Tribunales de las Islas Filipinas no se extiende más que conocer de aquellos actos de carácter penal sobre los cuales contiene disposiciones al efecto, este Juzado no debe ni puede válidamente ordenar la entrega a Lazarus G. Joseph de los libros de cuentas en cuestión. Si dichos libros fueron un tiempo de la propiedad de Behn, Meyer & Co., Ltd., han dejado de serlo desde que por el Custodio de Bienes de Extranjeros fueron vendidos a John Bordman, bajo las disposiciones de la Ley del Congreso de los Estados Unidos de que se ha hecho mención. Esto es tanto más cierto aún cuanto que el artículo 9 de la citada ley, contiene entre otras, las siguientes disposiciones.

"Que toda persona que no sea un enemigo o aliado de enemigo, que reclama alguna participación derecho o título en cualquier dinero u otra propiedad que haya sido traspasada, transferida, cedida, entregada o pagada al custodio de bienes de extranjeros, en virtud de la presente, y retenida por él o por el Tesorero de los Estados Unidos, o a quien le esté en deber un enemigo a aliado de enemigo, cuya propiedad o cualquier parte de ella hubiese sido traspasada, transferida, cedida, entregada o pagada al custo-

dio de bienes de extranjeros en virtud de la presente y retenida por él o por el Tesorero de los Estados Unidos, podrá presentar a dicho custodio una notificación de su reclamación, jurada y en forma tal que contenga las circunstancias que el referido custodio exija. * * *

"Salvo como se dispone en la presente, el dinero u otra propiedad traspasada, transferida, cedida, entregada a pagada al custodio de bienes de extranjeros no estarán sujetos a derechos preferente, embargo, entredicho, proceso de depósito, o ejecución, ni a ninguna orden o decreto de un tribunal."

Al expedirse la orden que nombre un depositario en esta causa, no es llamó la atención del Juzgado al hecho de que las propiedades pertenecientes al aquí demandante habían sido vendidas con anterioridad por el Custodio de Bienes de Extranjeros a John Bordman. De otro modo, no se hubiera expedido dicha orden, y menos todavía si se hubiera demostrado que habían sido vendidas dichas propiedades mucho antes de haberse dictado la sentencia en favor de A. N. Jureidini & Bros.

El remedio que le queda a Jureidini & Bros. es ejercitar la acción prevista en el artículo 10 de la tantas veces citada Ley del Congreso de 12 de Octubre de 1917.

Por los expuesto, y habiéndose demostrado, en sentir del Juzgado, el interes que J. M. Menzi, John Bordman y el Banco de las Islas Filipinas tienen en estas actuaciones, siendo el de Bordman el de haber adquirido mediante compra por la cantidad de ₱660,000.00 todos los intereses, derechos, acciones, libros, y comprobantes de la aquí demandante; el de J. M. Menzi, el de haber sido designado por dicho Bordman para hacer cargo de dichos bienes y libros en su nombre; y el del Banco de las Islas Filipinas, el de haber abonada la cantidad de dinero con que el citado Bordman efectuó la compra, por la presente se resuelve permitir como

se permite y autoriza a dichas partes, intervenir en esta causa; y habiendo llegado el Juzgado a la conclusión de que no tiene jurisdicción ni la tenía para expedir el nombramiento de depositario judicial en vista de haber sido vendidos todos los bienes de la mencionada demandante por el Custodio de Bienes de Extranjeros de conformidad con la Ley del Congreso de que ha venido haciéndose mención; por la presente se resuelve asimismo declarar como se declara sin efecto la orden del Juzgado de 10 de Agosto de 1922, que nombre depositario judicial a Lazarus G. Joseph. Cancelese la fianza prestada por dicho depositario para garantizar el fiel desempeño de su cargo; y se declara que J. M. Menzi no tiene obligación de entregar los libros que tiene a su cargo, que fueron anteriormente de la propiedad de la demandante Behn, Meyer & Co., Ltd., al mencionado Lazarus G. Joseph.

Así se ordena.

Manila, I. F., Septiembre 26, 1923.

(Sgd.)

ANACLETO DIAZ,

Juez.

L.

Under date of October 1, 1923, counsel for A. N. Jureidini & Bros. and Lazarus G. Joseph filed the following motion for the reconsideration of the above resolution:

(Omitting Title and Heading.)

Motion.

Come now the Receiver and A. N. Jureidini & Bros. in the above-entitled case and move this Court that the Court reconsiders the resolution of this Court dated September 26, 1923, and thereafter order the delivery of the books to the said receiver.

Manila, P. I., October 1, 1923.

(Sgd.)

SCHWARZKOPF & OHNICK,

Attorneys for the Receiver and

A. N. Jureidini & Bros.

Notice.

To intervenors or their attorneys, Messrs. Crossfield & O'Brien and Messrs. Hartigan & Welch.

SIRS: Please take notice that on Saturday, October 6, 1923, at 8.30 a. m., or as soon thereafter as counsel can be heard, the undersigned will move the Court to take up for hearing and disposition the attached motion.

Manila, P. I., October 3, 1923.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver.

178 Juan Luna, Manila.

Received copy October 3, 1923.

CROSSFIELD & O'BRIEN,

By E. ANGELES.

M.

Under date of December 3, 1923, the Court entered the following order denying the above petition for reconsideration:

(Omitting Title and Heading.)

Auto.

En la moción presentada el día 3 de Octubre de 1923 por el depositario nombrado en esta causa y por A. N. Jureidini & Bros. se pide la reconsideración de la resolución del Juzgado de fecha 26 de Septiembre del expresado año. Aunque en dicha moción no se exponen las razones en que la misma se funda, puede deducirse sin embargo, del informe que la acompaña, que dichas razones son: (1) que el Custodio de Bienes de Extranjeros no ha vendido las propiedades de la demandante Behn, Meyer & Co., Ltd.; (2) que no podía vender dicha propiedades porque ni dicha compañía fué declarada "enemiga" según los términos de

la Ley del Congreso de los Estados Unidos intitulada "Ley que define, regula y castiga el comercio con el enemigo y que provee a otros fines," ni el referido Custodio de Bienes de Extranjeros ha tenido jamás posesión de dichas propiedades después de un debido requerimiento de entrega, por la razón de que no era posible dicho requerimiento en vista del hecho de que a Behn, Meyer & Co., Ltd., se le había concedido por el Presidente de Estados Unidos la licencia necesaria para negociar con el "enemigo."

Una detenida consideración de las pruebas documentales presentadas por John Bordman y J. M. Menzi a quienes se había concedido permiso para intervenir en esta causa, pruebas que no han sido impugnadas y consisten en los Exhibitos A, B, C, D, E y F, hace ver cuán infundadas son las razones alegadas en apoyo de la referida moción de reconsideración. El Exhibito A demuestra que en 16 de Febrero de 1918, el Custodio de Bienes de Extranjeros tomó posesión de todo el negocio y de todas las propiedades de la mencionada compañía Behn, Meyer & Co., Ltd., habiendo sido designado W. D. Pemberton como depositario de los mismos. Los Exhibitos D y E demuestran que la licencia concedida a Behn, Meyer & Co., Ltd., bajo las disposiciones de la ya mencionada Ley del Congreso, no fué solamente para continuar en el negocio, a que estaba dedicada, sino para vender y liquidar dicho negocio y entregar al Custodio el producto de su venta y liquidación si aquél así lo requiriese; y demuestran también juntamente con los Exhibitos B y C, que se practicó dicha liquidación y se vendieron el negocio y todas las propiedades de la citada compañía sin excluir sus comprobante de cuentas y libros, por la cantidad de ₱660,000.00 a uno llamado John Bordman; y el Exhibito F demuestra que en 21 de Febrero de 1919, el Custodio de Bienes de Extranjeros por medio de su representante en Filipinas, después de determinar que Behn, Meyer & Co., Ltd., era "un enemigo" requirió a la misma que le entregase todas sus propiedades para tenerlas en su poder, y administrarlas de conformidad con la ley.

La alegacion de que el Custodio de Bienes de Extranjeros no ha observado las disposiciones de la repetida Ley del Congreso sobre comercio con el enemigo, ni los reglamentos promulgados para el cumplimiento de dicha ley, al tomar la accion que ha tomado, y obrar en la forma en que ha obrado en el caso de que se trata, de la aqui demandante, no encuentra apayo en las pruebas; y la presunción de la ley es que él obró exactamente como debia obrar y que observó todas las disposiciones de ley relativas al caso.

Por lo expuesto, el Juzgado es de opinion que su resolucion de fecha 26 de Septiembre de 1923, esta sostenida por las pruebas, y ajustada a derecho, y debe ser mantenida.

Por tanto, la moción de reconsideración de la referida resolución queda por la presente desestimada.

Asi se ordena.

Manila, I. F., Diciembre 3, 1923.

(Sgd.)

ANACLETO DIAZ,
Juez.

N.

Under date of December 12, 1923, Lazarus G. Joseph and A. N. Jureidini & Bros. filed the following Exception and Notice to Perfect a Bill of Exceptions:

(Omitting Title and Heading.)

Exception and Notice to Perfect a Bill of Exceptions.

Come now Lazarus G. Joseph, Receiver for the plaintiff in the above entitled case, and Jureidini & Bros., through undersigned attorneys, and except to the order of this Court entered on December 3, 1923, notice of which was received on December 10, 1923, denying their motion for reconsideration of the order of this Court entered on September 26,

1923, and here give notice of their intention to perfect a Bill of Exceptions within the time limited by law.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver and Jureidini Bros.

178 Juan Luna, Manila.

And now, desiring to take this case to the Supreme Court of the Philippine Islands by Bill of Exceptions, notice of which is hereby given, Lazarus G. Joseph, as Receiver of Behn, Meyer & Co., Ltd., and A. N. Jureidini & Bros., within the time limited by law, tender this Bill of Exceptions and pray that the same may be allowed, approved and transmitted to the Supreme Court, together with all evidence, oral and documentary and stipulations taken at the trial of this cause, which said evidence is hereby incorporated by reference into this Bill of Exceptions so that the errors complained of may be considered by the Supreme Court.

Manila, P. I., May 14, 1924.

SCHWARZKOPF & OHNICK,

By BENJ. S. OHNICK,

Attorneys for Receiver of Behn, Meyer & Co.,

Ltd., and A. N. Jureidini & Bros.

178 Juan Luna, Manila.

Received copy May 14, 1924.

HARTIGAN & WELCH.

CROSSFIELD & O'BRIEN.

UNITED STATES OF AMERICA,
Philippine Islands:

COURT OF FIRST INSTANCE OF MANILA, BRANCH III.

No. 14757.

BEHN, MEYER & Co., LTD., Plaintiff,

versus

J. S. STANLEY ET AL., Defendants.

I hereby certify that the Bill of Exceptions filed by the attorneys for Receiver and A. N. Jureidini & Bros. is correct, and is in the opinion of the Court sufficient for a review by the Supreme Court of all rulings, orders and judgments made in this action, to which exceptions were reserved by the attorneys for receiver and A. N. Jureidini, at the time of making each rulings, orders and judgments.

Manila, P. I., May 19, 1924.

GEORGE R. HARVEY,
Judge.

PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 57 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 28 day of May, 1924.

(Seal of the Supreme Court of the Philippine Islands.)

R. SUMMERS,
Escribano,
 Por JOSE RECUENCO,
Deputy.

I hereby certify that the foregoing is a true and correct copy.

(Seal of the Supreme Court of the Philippine Islands.)

MANUEL M. DE HUAINOS,
Deputy Clerk Supreme Court.

[Internal revenue stamp, documentary, 20c. Canceled
June, 1924.]

SUPREME COURT OF THE PHILIPPINE ISLANDS, MANILA.

Filed May 29, 1924, at 11.29 a. m.

Conste que en este día de —, de 1924, se han enviado
5 ejemplares de esta Pieza de Excepciones impreso a cada uno
de los abogados de las partes en este asunto.

Por el Escribano.

— — —,
Delegado.

EXHIBIT D.

UNITED STATES OF AMERICA,
Philippine Islands:

IN THE COURT OF FIRST INSTANCE FOR THE CITY OF MANILA.

No. —.

LAZARUS G. JOSEPH, Receiver of Behn, Meyer & Co., Ltd.,
Plaintiff,

vs.

J. M. MENZI, JOHN BORDMAN, and THE BANK OF THE
PHILIPPINE ISLANDS, Defendants.

Complaint.

Comes now plaintiff in the above entitled cause, and for first cause of action alleges:

I.

That the plaintiff in the above entitled cause of action has been regularly and legally appointed by the Court of First Instance for the City of Manila, Philippine Islands, the receiver of Behn, Meyer & Co., Ltd., a foreign corporation duly registered and licensed under the laws of the Philippine Islands, to conduct their business in the Philippine Islands, with their principal place of business in the City of Manila, and that the plaintiff herein has duly qualified as such receiver and as such is now administering the business of the said Behn, Meyer & Co., Ltd.

II.

That the said Behn, Meyer & Co., Ltd., for years prior and at all times mentioned hereinafter, was a corporation duly

and regularly incorporated in the City of Singapore, Strait Settlements, Empire of Great Britain, and as such corporation of the Empire of Great Britain, the said Behn, Meyer & Co., Ltd., applied for, was registered and received a license to do business in the Philippine Islands according to law, and that they have continued to do business for all the times hereinafter mentioned; that the United States of America, during the times hereinafter mentioned, was not at war with Great Britain or any territory or possession of Great Britain; and that the firm of Behn, Meyer & Co., Ltd., was not a corporation incorporated within any territory, including that occupied by the army of any nation with which the United States of America was at war.

III.

That the defendant J. M. Menzi is of legal age, a resident of the City of Manila, and a subject and citizen of the Republic of Switzerland, and has at no time hereinafter mentioned been a citizen or subject of the United States of America nor a citizen nor subject of the Philippine Islands.

IV.

That the defendant John Bordman is of legal age, a citizen of the United States of America, and a resident of the City of Manila, Philippine Islands.

V.

That the defendant The Bank of the Philippine Islands is a duly organized, authorized and registered corporation under the laws of the Philippine Islands with its principal place of business in the City of Manila, Philippine Islands.

VI.

That for several years prior to March 19, 1918, the defendant J. M. Menzi was a shareholder and manager of the

aforesaid foreign corporation, Behn, Meyer & Co., Ltd., in the Philippine Islands, and as such director-manager administered the business of said Behn, Meyer & Co., Ltd., in trust for the shareholders and owners thereof.

VII.

That the said defendant, John Bordman, was during a part of 1918 and a part of 1919 an employee and executive officer in the office of the Alien Property Custodian of the United States of America, with duties and offices in the Philippine Islands.

VIII.

That on the said 19th day of March, 1918, the War Trade Board, in consideration of the information presented by the said J. M. Menzi, and in the City of Washington, D. C., United States of America, and in the exercise of its powers and duties contained in the provisions of the Trading With the Enemy Act and amendments and the Executive Orders, and the rules and regulations issued thereunder, granted to the said Behn, Meyer & Co., Ltd., a War Trade License numbered E. T. License 11291, and which said license is as follows:

“License is hereby granted to Behn, Meyer & Co.,
“Ltd., a corporation organized under the laws of
“Straights Settlement, and doing business in the Phil-
“ippine Islands, to perform such acts as may be
“necessary to continue the business of the said Behn,
“Meyer & Co., Ltd., or in the alternative, to perform
“such acts as may be necessary for a complete sale,
“liquidation and disposition of the business, assets,
“and property of the said Behn, Meyer & Co., Ltd.,
“according as it may seem advisable to the Alien
“Property Custodian that the business of Behn,
“Meyer & Co., Ltd., should continue or should be

"liquidated, sold and disposed of; and in the course
 "of performing such acts to trade with any person,
 "firm or corporation, except an 'enemy' or 'ally of
 "enemy' not holding a license granted under the
 "Trading With the Enemy Act, or a person acting on
 "behalf of, or for the benefit of, such an 'enemy' or
 "'ally of enemy.'

"*Provided, however,* that the license may in the
 "discretion and at the direction of the Alien Property
 "Custodian collect, under the supervision of the Alien
 "Property Custodian, any sums due from an 'enemy'
 "or 'ally of enemy' or person acting for or in behalf
 "of an 'enemy' or 'ally of enemy':

"It is a term and condition of this license that:

"1. All acts performed hereunder shall be carried
 "out under the direction and supervision of the Alien
 "Property Custodian and in accordance with such
 "plan and method as may be desired by the Alien
 "Property Custodian, and all expenses of such di-
 "rection and supervision shall be borne by the license;

"2. The license shall transfer to the Alien Prop-
 "erty Custodian may require, the proceeds of any
 "liquidation, sale and disposition, which may occur
 "as aforementioned, either at the termination of said
 "liquidation, sale and disposition, or from time to
 "time during the course thereof;

"3. A report of the progress of such liquidation,
 "sale and disposition shall be made to the Alien Prop-
 "erty Custodian and to the War Trade Board at the
 "end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the
 "United States to participate with Behn, Meyer &
 "Co., Ltd., in any acts which this license may author-
 "ize the said Behn, Meyer & Co., Ltd., to undertake."

IX.

That at the time of the granting the aforesaid license to the said Behn, Meyer & Co., Ltd., the said defendant, John Bordman, was an employee and an executive of the said Alien Property Custodian (who, by virtue of said license and law, supervised the business of the said Behn, Meyer & Co., Ltd.), and that the said John Bordman continued in such employment and executive position until some time in 1919; and that by virtue of the law and the rules and regulations of the Alien Property Custodian, and the Executive Orders of the President of the United States of America, the said John Bordman was incapable to and prohibited by law from dealing directly or indirectly with any property subject to the supervision of the said Alien Property Custodian to his own personal advantage or benefit.

X.

That the defendant the said J. M. Menzi, being a citizen and subject of the Republic of Switzerland and not a citizen or subject to the United States of America nor a citizen nor subject of the Philippine Islands, was incapacitated and prohibited under the law from acquiring any property or rights to or in any property, directly or indirectly, which was held by the Alien Property Custodian, or any property or rights to or in any property subject to the supervision of the said Alien Property Custodian; and that the said J. M. Menzi while acting as Manager of the said Behn, Meyer & Co., Ltd., was prohibited by law from acquiring, for his own profit, use or benefit, any property or property rights of the said Behn, Meyer & Co., Ltd.

XI.

That the defendant, the Bank of the Philippine Islands, in the year 1918 and the month of January of the year 1919 had knowledge of the above facts and of the provisions of

the Trading with the Enemy Act and the amendments thereof and the Executive Orders issued thereunder.

XII.

That notwithstanding the law and the regulations, and the facts as set forth above the defendant, J. M. Menzi, and the defendant, John Bordman, mutually agreed that the said Menzi, purporting to act under the terms of the above-mentioned license, would sell to the said John Bordman certain of the assets of the firm of Behn, Meyer & Co., Ltd., and the said John Bordman agree to buy the said assets and rights from the said J. M. Menzi, and the said defendant, The Bank of the Philippine Islands, agreed with the said J. M. Menzi and the said J. Bordman to furnish the money or capital necessary to the purchase of the said assets by the said John Bordman, provided that the said J. M. Menzi would manage the business to be established with the purchased assets, and that the said J. M. Menzi would receive fifty-one (51%) per centum of the profits accruing from the said business, in addition to a salary of two thousand five hundred (P2,500.00) Pesos, Philippine Currency, a month.

XIII.

That in pursuance of the above-mentioned agreement the said J. M. Menzi, pretending to act under the terms and conditions of the aforesaid license attempted to sell to the said John Bordman, certain assets of the said firm of Behn, Meyer & Co., Ltd., by signing a certain alleged bill of sale in favor of the said John Bordman and delivering to the said John Bordman the said certain assets of the said firm of Behn, Meyer & Co., Ltd., a copy of said alleged bill of sale is attached hereto and made a part hereof and marked "A."

XIV.

That in further pursuance of the said agreement by and between the said defendants the Bank of the Philippine

Islands did in fact advance the funds, cash, capital or credit to the said John Bordman to attempt to complete the said attempted sale of the said assets of the said firm of Behn, Meyer & Co., Ltd.

XV.

That the said agreement by and between the said defendants was contrary to law and in direct violation of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and to public policy, and all and any act or acts done in pursuance thereto was void and illegal and of no effect whatsoever and against the interests and to the damage of the said Behn, Meyer & Co., Ltd.

XVI.

That the said bill of sale signed by the said defendant J. M. Menzi in favor of the said John Bordman, was illegal, void and contrary to the provisions of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and contrary to the law of the Philippine Islands and any act or acts done or attempted to be done by virtue of the said bill of sale was void, illegal and of no effect whatsoever, and done in fraud of the said Behn, Meyer & Co., Ltd.

XVII.

That the aforementioned alleged Bill of Sale was not and has not been approved by the Alien Property Custodian and the War Trade Board or by the Alien Property Custodian and/or the War Trade Board, as provided by law.

XVIII.

That on the nineteenth (19th) day of March, in the year 1918, the said firm of Behn, Meyer & Co., Ltd., was the sole owner and possessor of real personal and mixed property, goods in transit, orders in transit, rights, effects (exclusive of patents, trade marks, trade names, labels, prints, copy-

rights and choses in action), which were then in the possession of the said defendant, J. M. Menzi, as manager and director of the said Behn, Meyer & Co., Ltd., and which were worth three million pesos (₱3,000,000.00) Philippine Currency.

XIX.

That the said defendant J. M. Menzi is now in possession of part of the above-mentioned assets and rights and that the said defendant the Bank of the Philippines claims right and interest to and in said assets.

XX.

That all of the above-mentioned assets and rights are the sole property of the said Behn, Meyer & Co., Ltd., and that the said Behn, Meyer & Co., Ltd., has never sold or disposed of the same or any part thereof and that the said Behn, Meyer & Co., Ltd., has the legal right to the same and to the possession of the same.

XXI.

That the said defendant, J. M. Menzi, is now in the possession of the books of account and other books and papers of the said Behn, Meyer & Co., Ltd., and the plaintiff herein has requested the said J. M. Menzi to deliver to the said plaintiff the said books of accounts and other papers and documents now in his possession which belonged, and belong to the said firm of Behn, Meyer & Co., Ltd., but notwithstanding the aforesaid request the defendant J. M. Menzi refused and still refuses to deliver to the said plaintiff the said books of accounts and/or other papers and/or documents belonging to the said Behn, Meyer & Co., Ltd.

XXII.

That the said J. M. Menzi is now in illegal possession of the above set forth property and property rights, books of accounts, papers and documents of the said firm of Behn,

Meyer & Co., Ltd., and refuses to turn over or to deliver to the plaintiff herein the said property or any part thereof.

XXIII.

That the plaintiff herein has requested the said J. M. Menzi to render to the said plaintiff a statement showing the exact status of the said business on the 19th day of March, 1918, and a statement of the conduct of the business of Behn, Meyer & Co., Ltd., subsequent to the said 19th day of March, 1918, and to account to the plaintiff herein for the funds, money, collections, goods and other assets which have come into his hands, and notwithstanding the said request the defendant J. M. Menzi refused to render any statement whatsoever and still refuses and refused and still refuses to account to plaintiff herein for any moneys, funds, collections, goods or other assets which have come into his hands and belonging to the said Behn, Meyer & Co., Ltd.

XXIV.

That the plaintiff herein has requested the defendant The Bank of the Philippine Islands to render the said plaintiff an account of all moneys which were received by the said defendant The Bank of the Philippine Islands, from the said Behn, Meyer & Co., Ltd., and all funds paid out for the said Behn, Meyer & Co., Ltd., since March, 1918, and the said defendant The Bank of the Philippine Islands refused to render the said account or any part thereof and still refuses so to do.

Second Cause of Action.

That as a second cause of action the plaintiff shows and alleges:

XXV.

That the plaintiff herein reproduces paragraphs one (1) to twenty-four (24), inclusive, of the above set forth first cause of action.

XXVI.

That subsequent to the aforesaid attempted sale of certain assets of the said Behn, Meyer & Co., Ltd., by the said defendant J. M. Menzi, as set forth above, the said defendant J. M. Menzi in still further pursuance to and in accordance with the agreement above mentioned by and between the defendants herein, and in conjunction with the defendants John Bordman and The Bank of the Philippine Islands, and in violation of the law and in violation of the terms and conditions of the before-mentioned War Trade License, and in violation of the Trading with the Enemy Act and the amendments and the Executive Orders of the President of the United States, in war time, and the rules and regulations of the President of the United States issued by virtue of and under the provisions of the said Trading with the Enemy Act and the amendments thereto, and in violation of his trust as Manager of the said Behn, Meyer & Co., Ltd., attempted to sell to the said John Bordman at a private sale, and purporting to act under the aforesaid War Trade Board license, certain assets of the said Behn, Meyer & Co., Ltd., which said assets are called "bills receivable," and which are more particularly set forth in the document marked "B" attached hereto and made a part hereof, that said alleged Bill of Sale is illegal, void and of no effect and does not and cannot pass any title whatsoever.

XXVII.

That the said document "B" purports to be a bill of sale by the said J. M. Menzi, purporting and pretending to act for the said Behn, Meyer & Co., Ltd., by virtue and under the terms and conditions of the aforesaid War Trade License, to the said John Bordman, and in pursuance of the aforesaid agreement made by and between the defendants herein, when in truth and fact the said J. M. Menzi was acting in violation of the terms and conditions of the said War Trade

License, in violation of the law and in violation of his trust as Manager of the said Behn, Meyer & Co., Ltd.

XXVIII.

That prior to the date of the execution of the said document "B" and at the time of the execution of the same, the said defendants, and each of them, had personal knowledge, were cognizant, and knew that certain items mentioned in the said document "B" as "accounts receivable" were in truth and fact not accounts receivable owing to and belonging to the said Behn, Meyer & Co., Ltd., and that statements made in the said document "B" were misrepresentations of the actual facts, and were made in further pursuance of the aforesaid agreement by and between the defendants herein, and made with the intention of defrauding the said Behn, Meyer & Co., Ltd., and for the personal gain and pecuniary profit of the said defendants, and made to the damage of the said Behn, Meyer & Co., Ltd.

XXIX.

That the item referred to on page three (3) of the said document "B" as an account receivable owing to and belonging to the said Behn, Meyer & Co., Ltd., and entitled "Emil Lutz, Zurich, ₱178,695.82," purports to and is alleged by the said defendant J. M. Menzi, to represent that one Emil Lutz, of Zurich, Switzerland, owed and was at that time indebted to the said firm of Behn, Meyer & Co., Ltd., to the extent and of the value of the sum of One Hundred and Seventy Eight Thousand Six Hundred and Ninety five pesos and Eighty Two Centavos (₱178,695.82), Philippine currency.

XXX.

That the said defendant John Bordman, in further pursuance of the aforesaid agreement by and between the defendants and with a full knowledge of the true facts, at-

tempted to purchase the above mentioned alleged "account receivable" from the said J. M. Menzi as set forth in the said document "B" for an amount equal to fifteen (15%) per centum of the aforesaid sum of One Hundred and seventy eight thousand six hundred and ninety five pesos and eighty two centavos (₱178,695.82), Philippine Currency, that is to say the said defendant John Bordman, paid to the said J. M. Menzi, on paper, the sum of Twenty six thousand eight hundred and four pesos and thirty seven centavos (₱26,804.37), Philippine Currency, in consideration of this alleged account receivable.

XXXI.

That on the date of the said alleged sale as set forth in the said document "B", to wit: the 25th day of January, 1919, and some time prior thereto, the said defendants, and each of them knew, were cognizant, and had personal knowledge that the said alleged account receivable was not in fact owing by the said Emil Lutz of Zurich, Switzerland, to the said firm of Behn, Meyer & Co., Ltd., nor neither at law nor in equity, nor was any such amount, or any amount, receivable or owing to the said Behn, Meyer & Co., Ltd., from the said Emil Lutz or any other person in Zurich, and that the said alleged facts in document "B" were made with a full knowledge of the facts by the defendants and each of them in fraud of the said Behn, Meyer & Co., Ltd., and for the personal profit and pecuniary benefit of the said defendants and in damage to the said Behn, Meyer & Co., Ltd.

XXXII.

That prior to the attempted sale as set forth above and more particularly described in document "B" the defendant J. M. Menzi, while acting as the manager of the said Behn, Meyer & Co., Ltd., and administering the said business in trust for the shareholders and owners of the said Behn,

Meyer & Co., Ltd., purchased from the defendant The Bank of the Philippine Islands, a bill of exchange, or draft or draft of exchange, in favor of the said Emil Lutz of Zurich, Switzerland, paying to the said defendant The Bank of the Philippine Islands therefor the sum of One Hundred and Seventy Eight Thousand Six Hundred and Ninety Five Pesos and Eighty Two Centavos (P178,695.82), Philippine Currency, belonging to the said Behn, Meyer & Co., Ltd. and then on deposit with the said defendant The Bank of the Philippine Islands.

XXXIII.

That the said defendant J. M. Menzi received the said bill of exchange, draft or draft of exchange from the said defendant The Bank of the Philippine Islands, and that the said Behn, Meyer & Co. Ltd. and as trustee for the shareholders and owners thereof, did not send or transmit or attempt to send nor transmit, and has not sent, transmitted nor caused to be sent or transmitted the said bill of exchange, draft or draft of exchange to the said Emil Lutz of Zurich, Switzerland, or to any one else in Zurich, but on the contrary retained the possession of the said bill of exchange, draft or draft of exchange until after the execution of the aforesaid document "B."

That in further pursuance of the said agreement by and between the said defendants the Bank of the Philippine Islands did in fact advance the funds, cash, capital or credit to the said John Bordman to attempt to complete the said attempted sale of the said "accounts receivable" of the said firm of Behn, Meyer & Co. Ltd. as disclosed by said document "B."

That the said agreement by and between the said defendants was contrary to law and in direct violation of the Trading With the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and to public policy, and all and any act or acts done in pursuance thereto was

void and illegal and of no effect whatsoever and against the interests and to the damage of the said Behn, Meyer & Co., Ltd.

That the said Bill of Sale ("B") signed by the said defendant J. M. Menzi in favor of the said John Bordman, was illegal, void and contrary to the provisions of the Trading with the Enemy Act and the amendments thereto and the Executive Orders issued thereunder, and contrary to the law of the Philippine Islands and any act or acts done or attempted to be done by virtue of the said bill of sale was, void, illegal and of no effect whatsoever, and done in fraud of the said Behn, Meyer & Co., Ltd.

That the aforementioned alleged Bill of Sale ("B") was not and has not been approved by the Alien Property Custodian and the War Trade Board or by the Alien Property Custodian and/or the War Trade Board, as provided by law.

That all of the said "accounts receivable" or any funds representing the same are the sole property of the said Behn, Meyer & Co., Ltd., and that the said Behn, Meyer & Co., Ltd., has never sold or disposed of the same or any part thereof and that the said Behn, Meyer & Co., Ltd., has the legal right to the same and to the possession of the same.

Therefore, the plaintiff herein prays:

That in the first cause of action above set forth that the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys and/or property received by the said defendants and/or any of them, directly or indirectly, from assets belonging to the said firm of Behn, Meyer & Co., Ltd., on January 31, 1917, or at any subsequent time;

That the Court declare that the alleged bill of sale (Exhibit "A") made by the defendant J. M. Menzi and in favor of the said defendant, John Bordman, to be null and void and of no effect;

That the Court order that the defendants, and each of

them to deliver to the plaintiff the property taken by the defendants and/or any of them in pursuance to the said alleged Bill of Sale (Exhibit "A"), and that in the event that the said defendants and/or any of them have not possession of the aforesaid property, then, in that event, the Court order the defendants, and each of them severally to pay to the plaintiff the value of said property and/or any and all sums of money collected by them or any of them from the sale or disposal of the aforesaid property or assets, and together with interest on the value of the said property at the rate of 6% per annum from the 19th day of March, 1918;

For such other relief as the Court deems just and equitable and for the costs of this action.

That in the second cause of action the Court order the defendants, and each of them severally, to render a true and correct account of any and all moneys received by the said defendants, or any of them severally or jointly, in virtue of or in pursuance of the said document, Exhibit "B," or in any other manner, any sums of money, credits or promises, directly or indirectly, from any accounts or choses in action belonging to the said Behn, Meyer & Co., Ltd., on March 19, 1918, or at any subsequent date;

That the Court order and declare that the said alleged bill of sale (Exhibit "B") made by the defendant J. M. Menzi in favor of the said defendant, John Bordman, is null and of no effect;

That the Court order the defendant, and each of them severally, to pay to the plaintiff any and all amounts, collected or received by the defendants, or any of them jointly and/or severally, for all or any of the alleged "accounts receivable," and interest at the rate of 6% per annum on the total amount of the said accounts receivable as shown by Exhibit "B," from the 19th day of March, 1918.

For such other relief as this Court shall deem just and equitable, and for the costs of this action.

Manila, P. I., August 31, 1923.

H. D. GREEN,
SCHWORZKOPF & OHNICK,
Attorneys for Plaintiff.

UNITED STATES,
Philippine Islands,
Manila, ss:

Lazarus G. Joseph, being first duly sworn and exhibiting his cedula No. F-2503 dated January 2, 1923, issued at Manila, deposes and says:

That he is the receiver of the firm of Behn, Meyer & Co., Ltd., and that he has read and understood the foregoing complaint and that the facts alleged therein are true and correct according to his best knowledge and belief.

LAZARUS G. JOSEPH,
Receiver of Behn, Meyer & Co., Ltd.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Sworn and subscribed to before me by Lazarus G. Joseph, personally known to me as the person who signed the foregoing affidavit, this 4th day of September, 1923. Affiant exhibited to me his cedula No. F-2503 issued at Manila, on January 2, 1923.

BARTOLOME L. MALLARI,
Notary Public.

My commission expires December 31, 1924.

No. 118, pg. 26, Bk. 1923.

EXHIBIT "A."

Whereas the undersigned, Behn, Meyer & Company, Ltd., was granted license No. ET. 11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company, Ltd., a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Co., Ltd., or in alternative to perform such acts as may be necessary for a complete sale, liquidation, and disposition of the business, assets and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co., Ltd., should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf of, or for the benefit of, such an 'enemy' or 'ally of enemy.'

"Provided, however, that the license may in the discretion and at the direction of the Alien Property Custodian collect, under the provision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy,' or person acting for, or on behalf of, an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"(1) All acts performed hereunder shall be carried out under the direction and supervision of the Alien Property Custodian, and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such direction and supervision shall be borne by the license;

"(2) The license shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale and disposition, which may occur as aforementioned, either at the termination of the said liquidation, sale and disposition or from time to time during the course thereof;

"(3) A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the time of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with Behn, Meyer & Co., Ltd., in any acts which this license may authorize the said Behn, Meyer & Co., Ltd., to undertake."

Now, therefore, these presents witness that by virtue of the foregoing license, and in consideration of the sum of Six Hundred Thousand Pesos (P600,000.00) Philippine Currency, to it paid by John Bordman of Iloilo, Philippine Islands, the receipt whereof is acknowledged, does hereby sell and convey to said John Bordman, his executors, administrators and assigns, the following property, to wit:

(1) The entire stock of Textiles, Sundries, Drugs, Hardware and Chucherias in its branches located in Manila and Cebu, Philippine Islands, as per Schedule "A" hereto attached.

(2) All Furniture and Fittings as per Schedule "B" hereto attached.

(3) That parcel of land situated in the City of Baguio, Philippine Islands (Lot number 16, in Residence Section "D") consisting of 9307.24 square meters, of which Behn, Meyer & Co., Ltd., is the registered owner, its title thereto being evidenced by Torrens Certificate No. 247 in the land records of the City of Baguio.

(4) Trade-marks as per Schedule "C" hereto attached belonging to the business of Behn, Meyer & Co., Ltd., in the Philippine Islands.

(5) The leasehold interest held by Behn, Meyer & Co., Ltd., in the premises of 180-184 Calle Juan Luna, Manila.

(6) The good-will of the business of Behn, Meyer & Co., Ltd., in the Philippine Islands. Good-will in this connection shall be understood to include all cable codes, cuts, electroplates, customer lists and all other accessories to enable the buyer to conduct the business in its accustomed way.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guaranty, express or implied, concerning or in any way respecting such property or business, or any information concerning the same.

This sale has been made under the provision and with the approval of the Alien Property Custodian, and in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 22nd day of January, 1919.

BEHN, MEYER & CO., LTD.

(Sgd.)

J. M. MENZI,

Manager.

Signed in the presence of:

(Sgd.) P. A. BEOMAN.

(Sgd.) J. M. DE JESUS.

Acknowledgment.

UNITED STATES OF AMERICA,

Philippine Islands:

In the City of Manila, on this 23rd day of January, 1919, personally appeared J. M. Menzi known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Menzi exhibited his cedula F11441 issued at Manila, P. I., on January 17, 1919.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1919.

Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
(Sgd.) By DOUGLASS M. MOFFAT,
Managing Director for the Philippine Islands.

CITY OF MANILA,

Philippine Islands, ss:

In the City of Manila, on this 23d day of January, 1919, personally appeared Douglass M. Moffat known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. Said Mr. Moffat did not exhibit any cedula being exempt from this tax on account of his being a non-resident of and temporarily in these islands.

Before me,
(Sgd.)

S. W. O'BRIEN,
Notary Public.

My commission expires December 31, 1920.

Notarial Register, No. 42, page 92, book 4.

EXHIBIT "B."

Whereas the undersigned Behn, Meyer & Company, Ltd., was granted License No. ET-11291 dated March 19, 1918, by the War Trade Board of the United States of America, pursuant to the provisions of the Act of Congress approved October 6, 1917, known as the "Trading with the Enemy Act," the terms and conditions of which license are as follows:

"License is hereby granted to Behn, Meyer & Company Ltd. a corporation organized under the laws of Straits Settlements, and doing business in the Philippine Islands, to perform such acts as may be necessary to continue the business of the said Behn, Meyer & Company Ltd. or in the alternative, to perform such acts as may be necessary for a complete sale, liquidation and disposition of the business, assets, and property of the said Behn, Meyer & Co., Ltd., according as it may seem advisable to the Alien Property Custodian that the business of Behn, Meyer & Co. Ltd. should continue or should be liquidated, sold and disposed of; and in the course of performing such acts to trade with any person, firm or corporation, except an 'enemy' or 'ally of enemy' not holding a license granted under the Trading with the Enemy Act, or a person acting on behalf or, or for the benefit of, such an 'enemy' or 'ally of enemy.'

"*Provided, however,* that the licensee may in the discretion and at the direction of the Alien Property Custodian collect, under the supervision of the Alien Property Custodian, any sums due from an 'enemy' or 'ally of enemy' or person acting for or in behalf of an 'enemy' or 'ally of enemy.'

"It is a term and condition of this license that:

"1. All acts performed hereunder shall be carried out under the direction and supervision of the Alien

Property Custodian and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expense of such direction and supervision shall be borne by the licensee;

"2. The licensee shall transfer to the Alien Property Custodian as the said Alien Property Custodian may require, the proceeds of any liquidation, sale, and disposition, which may occur as aforementioned, either at the termination of the said liquidation sale and disposition, or from time to time during the course thereof;

"3. A report of the progress of such liquidation, sale and disposition shall be made to the Alien Property Custodian and to the War Trade Board at the end of each calendar month or oftener if required.

"And license is hereby granted to all persons in the United States to participate with Behn, Meyer & Co. Ltd. in any acts which this license may authorize the said Behn, Meyer & Co. Ltd. to undertake."

Now, therefore these presents witness that by virtue of the foregoing license, and in consideration of the sum of Sixty Thousand Pesos (P60,000.00) Philippine Currency, to it paid by John Bordman of Manila, Philippine Islands, the receipt of which is acknowledged does hereby sell and convey to said John Bordman, his executors, administrators, and assigns, the following accounts receivable, together with all vouchers, entries and other proofs of the Indebtedness, to wit: Charge Not. No. 967 re "Sachsen" Hg./T'tau 12: *P. 20.71*; Charge Note No. 1102 re "Suevia" Hbg./Wladi 19: *P. 4.40*.—E. Meyer & Co., Tientsin: *P. 177.36*.—E. Engler, Saigon: *P. 50.00*.—R. Wesener, Tientsin: *P. 30.18*.—Julius Norden, Hamburg: *P. 48.87*.—Thoresen & Co. Shanghai: *P. 0.56*.—Speidel & Co., Saigon: *P. 7.09*.—Capt. Heyenga P/war: *P. 3*.—P. Bernhardt, Hamburg: *P. 1848.27*.—P. Weinschenk P/war: *P. 322.57*. A. Villeta, Manila: *P. 93.50*.—

Dierrieh Braun P/war: *P. 14.11.*—J. H. Fincke: P/war: *P. 6383.40.*—Gebr. Brunschweiler, Hauptweil: *P. 28,599.27.*—Alwin Readler, Berlin: *P. 278.12.*—A. Schonberg, P/war: *P. 10.00.*—Deutscher Maschinenbau, Pekin: *P. 23.204.20.*—Telge & Schroeter, Tientsin: *P. 754.68.*—Gravenhorst & Co. New York: *P. 19,392.16.*—Goods in transit: *P. 286.01.*—Stickerei Feldmühle, Rohrschach: *P. 628.67.*—Emil Lutz, Zurich: *P. 178,695.82.*—Esslingen Commission Receivable: *P. 1521.67.*—Thomoshiro Tanaka Osaka: *P. 123.40.*—Iwai & Co., Kobe: *P. 82.68.*—United Alkali Co. Liverpool: *P. 48.18.*—United Supply Co., San Francisco: *P. 924.65.*—Pacific Mail S. S. Co., Claim Acc.: *P. 919.69.*—Meerkamp & Co., Claim Acc.: *P. 53.41.*—Smith Bell & Co., Claim Acc.: *P. 5.10.*—W. F. Stevenson & Co. Claim Acc.: *P. 51.50.*—S. S. "Kafue," Claim Acc. *P. 190.20.*—S. S. Chinese Price, Claim Acc. *P. 838.98.*—North German Lloyd, Bremen: *P. 14.713.08.*—Deutsch-Australische Dampfschiffs-Ges., Hamburg: *P. 27,900.16.*—Deutsche Sudsee Phosphat Ges. Hamburg: *P. 1,138.01.*—M. Jebsen, Apenrade: *P. 11,625.28.*—Deutsch-Dampfschiffs-Ges. "Hansa" Hamburg: *P. 135.58.*—Melchers & Co., Shanghai: *P. 866.82.*—"Albingia" Insurance Co. Hamburg: *P. 1,138.03.*—"Allianz" Insurance Co. Berlin: *P. 55.84.*—Western Assurance Co. Toronto: *P. 28.79.*—Samarang Sea & Fire Assur. Co., London: *P. 43.75.*—North German Insurance Co. Hamburg: *P. 8,707.96.*—Trade Debtors: *P. 2,774.00.*—Robert Dollar Co. Claim Acc.: *P. 377.50.*—Dampfsch. Reederei "Union" Hamburg: *P. 100.00.*—G. F. Schlostelborg, Seattle *P. 22,476.64.*—H. J. Bell & Co. Manila: *P. 1,012.93.*—Versicherungs-Gesellschaft, Hamburg: *P. 38,155.47.*—China Mail S. S. Co., Claim Acc.: *P. 58.93.*—Ricardo Aguado, Manila: *P. 1,250.00.*

Cebu:—(Per November 30th, 1916) Sander Wielerx & Co., Hongkong: *P. 13.70.*—Jose Hagedorn, Cebu: *P. 2,536.56.*—Sundry Acct.: *P. 42.80.*—Outstanding Claims: *P. 2,078.40.*—Special Debtors *P. 104.14.*

Iloilo.—(Per December 31, 1918) Refund unexpired premiums Hamburg Insurances *P. 319.45*:—Refund unexpired premiums on Lloyds policies *P. 2,892.95*:—Neuss, Hesslein & Co., New York: (*P. 128.64* less Manila liability *P. 52.98*) *P. 75.66*:—Outstanding claims *P. 167.28*:—Goods in Transit *P. 2,413.94*.

Zamboanga.—(Per December 31, 1918.) Guttapercha consigned to New York: *P. 342.17*:—Lumber consigned to London *P. 4,245.07*:—Foreign Currency exchange (o/Germany. *P. 100.00*:—Jaffee & Sons, Manchester: *P. 461.46*:—Produce contractors *P. 1,135.73*:—Copra Venders *P. 794.12*:—Town Current Accts. (*P. 4,086.76* less depreciation *P. 3,774.97*) or *P. 311.79* less payments in 1919, *P. 192.79*:—Outstation Current Accts. (*P. 2,068.95* less depreciation *P. 1,020.67*) *P. 1,048.28*.

Neither the undersigned nor the United States nor the Alien Property Custodian nor any representative, or agent, or agency thereof, shall be held or admitted to make any representation or guarantee, express or implied, concerning or in any way respecting such accounts receivable.

This sale has been made under the supervision and with the approval of the Alien Property Custodian, in accordance with the terms and conditions of the aforesaid license.

Signed at Manila, Philippine Islands, this 24th day of January, 1919.

BEHN, MEYER & CO., LTD.,

(Sig.)

By J. MENZI,

Manager.

Signed in the presence of:

(Sig.)

A. S. CROSSFIELD.

J. MA. DE JESUS.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila, on this 24th day of January, 1919, personally appeared J. M. Menzi known to me to be the same person who executed the foregoing instrument and acknowledged the same to be his free act and deed. He exhibited his cedula F-11441 issued at Manila on January 17th, 1919.

Before me,
(Sig.)

S. W. O'BRIEN,
Notary Public.

My Commission expires Dec. 31, 1920.
Notarial Register No. 44, p. 92, book IV.
Approved:

A. MITCHELL PALMER,
Alien Property Custodian,
(Sig.) By DOUGLAS M. MOFFAT,
Managing Director for the Philippine Islands.

UNITED STATES OF AMERICA,
Philippine Islands:

In the City of Manila on this 24th day of January, 1919, personally appeared Douglas M. Moffat, known to me to be the same person who executed the foregoing approval and acknowledged the same to be his free act and deed. He did not exhibit a cedula, being exempt from this tax on account of being a non-resident of and but temporarily in the Philippine Islands.

Before me,
(Sig.)

S. W. O'BRIEN,
Notary Public.

My Commission expires Dec. 31, 1920.

EXHIBIT E.

IN THE SUPREME COURT OF THE UNITED STATES.

BEHN, MEYER & Co., LIMITED, Plaintiff,

AGAINST

THOMAS W. MILLER, as Alien Property Custodian of the United States, and FRANK WHITE, as Treasurer of the United States, Defendants.

Amended Complaint.

The plaintiff, Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Limited, respectfully represents:

1. That since December, 1905, the plaintiff has been and at all times hereinafter mentioned was a corporation organized and existing under the laws of Singapore, Straits Settlements, a Crown colony of the United Kingdom of Great Britain and Ireland.

2. The defendant Thomas W. Miller is a resident of the District of Columbia, and is now and since on or about March, 1921, has been the duly appointed, qualified and acting Alien Property Custodian, and is sued herein as the incumbent of said office. That the said defendant is the successor in said office of one Francis P. Garvan, who in turn was the successor of A. Mitchell Palmer, the first incumbent of said office, and said defendant as such officer is possessed of the right, property and interests owned or held by and subject to the obligations, duties and liabilities imposed by the laws of the United States upon his said predecessors in office.

3. The defendant Frank White is a resident of the District of Columbia and since on or about April, 1921, has been the duly appointed, qualified and acting Treasurer of

the United States, and is sued herein as the incumbent of said office.

4. This is a suit of Civil nature brought under the laws of the United States, namely, the Act of Congress known as the Trading with the Enemy Act, approved by the President October 6, 1917, and the acts amendatory thereto, and the Executive Orders and actions proclaimed and done in alleged conformity thereto, and also under and in conformity with the general jurisdiction and powers of this Court, and at the date of the commencement thereof eighteen months had not elapsed after the "end of the war" as prescribed and defined in said acts of Congress.

5. The plaintiff is not now and never has been an "enemy" or "ally of enemy" as defined in said acts of Congress, and never has been proclaimed by the President as included within the said terms or either of them; it is not now and never has been a resident, or incorporated within, or done business within any part of the territory (including that occupied by the military or naval forces) of any nation with which the United States is or at any time since April 6, 1917, was at war. It is not now and never has been a resident within, or incorporated within, or done business within any part of the territory (including that occupied by the military or naval forces) of any nation with which the United States now is or at any time since said date was at war.

6. That heretofore, and prior to February, 1918, the plaintiff had applied to the government of the Philippine Islands to be admitted to do business in the Philippine Islands as a foreign corporation, under the laws, rules and regulations of the Philippine Islands. That on the 5th day of February, 1907, the said plaintiff was regularly admitted and licensed to do business in the Philippine Islands, subject to the laws, rules and regulations of the Philippine Islands, and that the management of the said business in the Philip-

pine Islands was under the supervision and control of one J. M. Menzi, a citizen of the Swiss Republic.

7. That the business of the plaintiff was, in February, 1918, and for a considerable period prior thereto had been a valuable and going concern; and that in February, 1918, Francis Burton Harrison, purporting to act as the representative of the Alien Property Custodian in the Philippine Islands, caused to be seized the property of the plaintiff in the Philippine Islands and appointed as "Receiver" one W. D. Pemberton; that the aforesaid action being reported to the Alien Property Custodian that official disclaimed any such authority and such acts, whereupon the said Francis Burton Harrison, acting as the Governor General of the Philippine Islands, requested the War Trade Board to issue an Enemy Trading License for the corporation of Behn, Meyer & Co., Limited, and an Enemy Trading License No. 11291 was issued in consequence thereof for the corporation of Behn, Meyer & Co., Limited; and that by virtue of said Enemy Trading License the said W. D. Pemberton continued to supervise the business, affairs and property of the plaintiff; that the said supervisor, together with the said J. M. Menzi, the manager of Behn, Meyer & Co., Limited, in the Philippine Islands, and under the terms of the aforesaid War Trade Board License the person to sign and act for Behn, Meyer & Co., Limited, thereafter purporting to act under the terms of the Trading with the Enemy Act in collusion with John Bordman, an employee of the office of the Alien Property Custodian in the Philippine Islands, did purport to liquidate and sell the properties of your plaintiff as is more particularly set forth in a complaint to the Court of First Instance of Manila, Philippine Islands, a copy of which is attached hereto, marked for identification Exhibit "A" and prayed to be taken and read as a part hereof; and that the said Menzi, the said Pemberton, the said Bordman and the said Bank of the Philippine Islands acting in con-

cert for the purpose of defrauding the plaintiff, wrongfully and illegally paid and caused to be paid to an employee of the Alien Property Custodian large sums of money belonging to the plaintiff, which said sums of money were by the said employee paid into the Treasury of the United States, where they still are, and that the recovery from the defendants of these said sums of money is the object of this suit.

8. That the taking over and seizure of said property and assets of the plaintiff in the Philippine Islands, and the application for and the issuance of a War Trade License, and the said supervision and continued holding of the properties of the plaintiff was wrongful and illegal; that the purported sales, conveyance, transfer, assignment, delivery, and payment to the Alien Property Custodian and the Treasurer of the United States, were illegal, wrongful and void; and that the plaintiff was not an "enemy" or "ally of enemy" whose property or assets could be lawfully taken over or seized or supervised or conveyed, assigned, delivered or paid to the Alien Property Custodian or the Treasurer of the United States, within the true meaning and intent of the terms of the said Act of Congress; that on the contrary it was a corporation duly licensed as a foreign corporation in the Philippine Islands, incorporated in the Straits Settlements (which is the territory of a nation associated with the United States in the recent war) and was not a resident within, or doing business within the territory of any nation with which the United States was at war, or an ally of such nation; and that the said assets and property so taken over, seized, supervised, conveyed, transferred, assigned, delivered and paid as aforesaid were owned at the time of such taking, seizure, supervision, conveyance, transfer, assignment, delivery and payment by a citizen of another nation other than Germany, Austria, Hungary, or Austria-Hungary, namely, by the plaintiff, a citizen of Great Britain; and that all of the stock of the said corporation of Behn, Meyer & Co., Limited, at the time of the seizure, and for over three years next prior thereto

belonged to and was owned by the Public Trustee of Great Britain, not a citizen or subject of an enemy nation or ally thereof; that no legal determination was ever made under the Trading with the Enemy Act that the plaintiff was an "enemy" or "ally of enemy," or that said property and assets were enemy property and assets; and that no due and lawful demand for said property and assets, or any part thereof, as required by law, was ever made or served on plaintiff; that the exact amount so received by the Alien Property Custodian and the Treasurer of the United States is unknown to plaintiff, but he has been informed and believes, that it exceeds One million two hundred thousand dollars (\$1,200,000.00), which said moneys are now in the possession, control and custody of the defendants herein, and who are wrongfully withholding the same from plaintiff, and who are and have been receiving the income therefrom.

9. That heretofore, and subsequent to such seizure, taking over, supervision, conveyance, transfer, assignment, delivery and payment as aforesaid of said property and assets to the Alien Property Custodian and the Treasurer of the United States the plaintiff as required by Section 9 of the said Trading with the Enemy Act, duly filed with the said Alien Property Custodian a sworn notice of its claim to said property and assets and to the proceeds and avails thereof paid over to the Alien Property Custodian and/or the Treasurer of the United States and/or received by them or either of them as aforesaid.

10. The Straits Settlements hereinbefore referred to are a part of the British Empire and territory of the United Kingdom of Great Britain and Ireland, which is a nation associated with the United States in the prosecution of the recent war, and said nation in like cases extends reciprocal rights to citizens of the United States.

Wherefore plaintiff prays:

(1) That the defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States, be ordered to answer this amended bill of complaint, but not under oath, the answer under oath being hereby specifically waived;

(2) That the said defendants and each of them be directed to deliver to plaintiff to be administered according to law and the rules and orders of the Court of First Instance of Manila, all of said property and assets seized, taken over, supervised, conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or the defendant, the Treasurer of the United States as aforesaid, and now in the possession, custody or control of the above named defendants or either of them;

(3) That the said defendants and each of them be directed to pay over to plaintiff herein, to be administered as above indicated, the proceeds or avails of any alleged sale or liquidation or other disposition of any and all property and assets of Behn, Meyer & Co., Limited, or from the defendants in the above cited cause filed in the Court of First Instance of Manila by the said plaintiff and against the said John Bordman, J. M. Menzi and/or the Bank of the Philippine Islands, and/or from W. D. Pemberton, together with all income or interest accrued or realized thereon;

(4) That the defendants and each of them be directed to account to plaintiff for said property and assets, interest and income;

(5) That the plaintiff have such other and further relief as to the Court may seem just and equitable.

MARION BUTLER,
JOHN W. CLIFTON,
HENRY D. GREEN,

*Attorneys for Lazarus G. Joseph, as Receiver of
Behn, Meyer & Co., Limited, of the Philippine Islands.*

UNITED STATES,

District of Columbia, ss:

Marion Butler, John W. Clifton, and Henry D. Green, being first duly sworn, depose and say, each for himself, that they are the attorneys for Lazarus G. Joseph, Receiver of Behn, Meyer & Co., Limited, of the Philippine Islands, and that they, and each of them, have read the foregoing amended bill of complaint and know the contents thereof and that the same are true to the best of their knowledge and belief.

MARION BUTLER.
JOHN W. CLIFTON.
HENRY D. GREEN.

Sworn to before me this 27th day of October, 1924, in the City of Washington, District of Columbia.

[SEAL.]

C. JACKSON KEBLINGER,
Notary Public, D. C.

My commission expires Oct. 30, 1926.

[Endorsed:] In the Supreme Court of the United States. Behn, Meyer & Co., Limited, Plaintiff, vs. Thomas W. Miller, as Alien Property Custodian of the United States, and Frank White, as Treasurer of the United States, Defendants. Intervention. Marion Butler, Henry D. Green, John W. Clifton, Attys. for Pff.

[Endorsed:] File No. 30231. Supreme Court U. S., October Term, 1924. Term No. 343. Behn, Meyer & Company, Ltd., Appellant, vs. Thomas W. Miller, as Alien Property Custodian, &c., *et al.* Petition and motion of Lazarus G. Joseph, Receiver, &c., for leave to intervene, and Exhibits A to E, inc. Filed October 27, 1924.